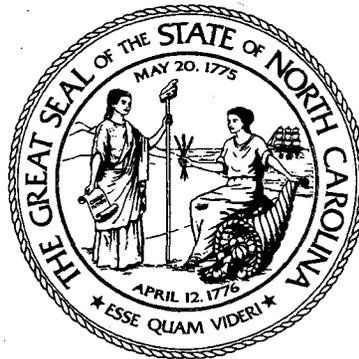


LEGISLATIVE RESEARCH COMMISSION

**Election Laws Reform**



REPORT TO THE  
1995 GENERAL ASSEMBLY  
OF NORTH CAROLINA  
1996 REGULAR SESSION

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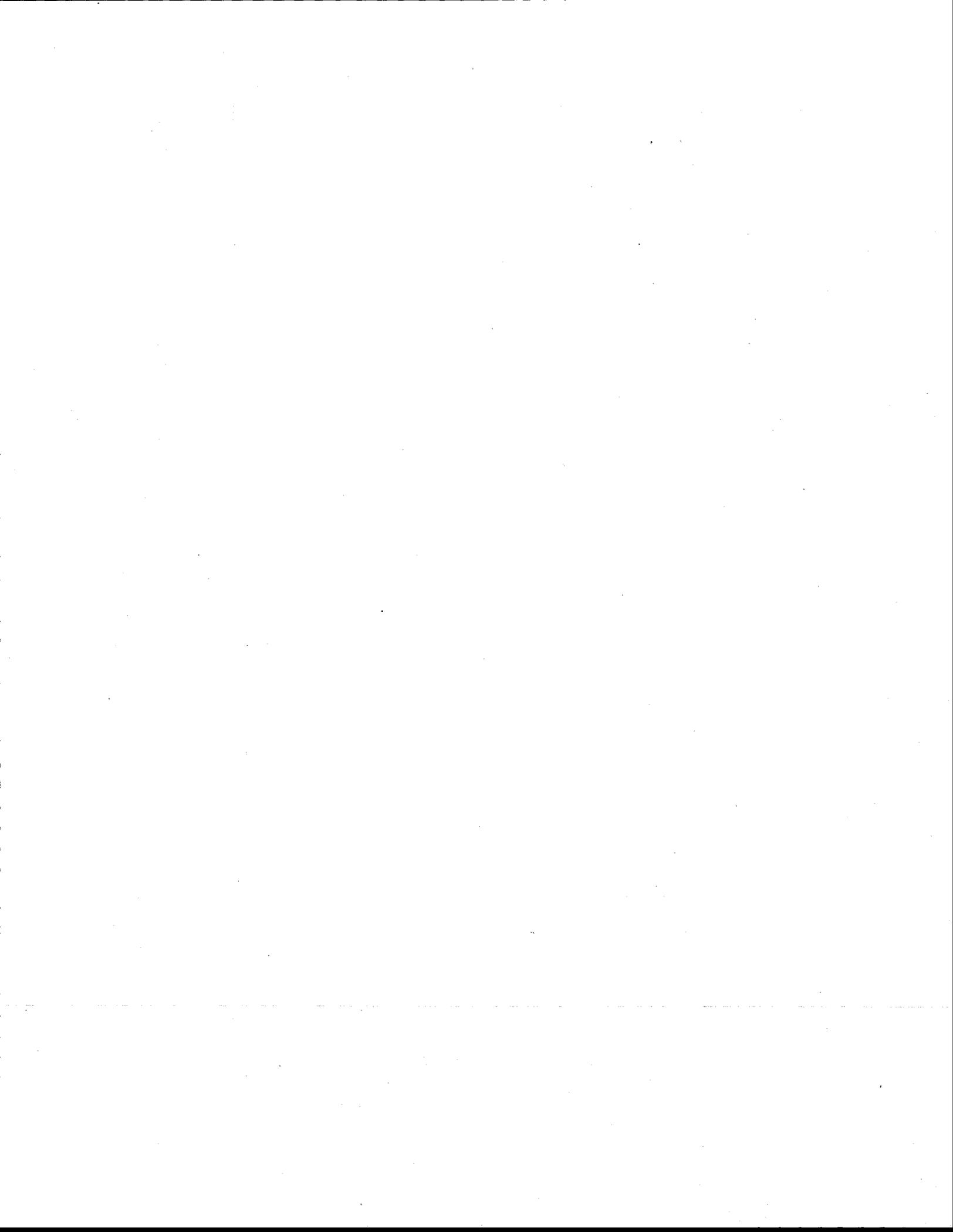
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STATE OF NORTH CAROLINA  
LEGISLATIVE RESEARCH COMMISSION  
STATE LEGISLATIVE BUILDING  
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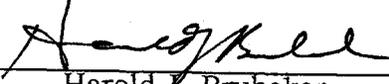


May 13, 1995

TO THE MEMBERS OF THE 1995 GENERAL ASSEMBLY (REGULAR SESSION 1996):

The Legislative Research Commission herewith submits to you for your consideration its interim report on Election Law Reform. The report was prepared by the Legislative Research Commission's Committee on Election Law Reform pursuant to G.S. 120-30.17(1).

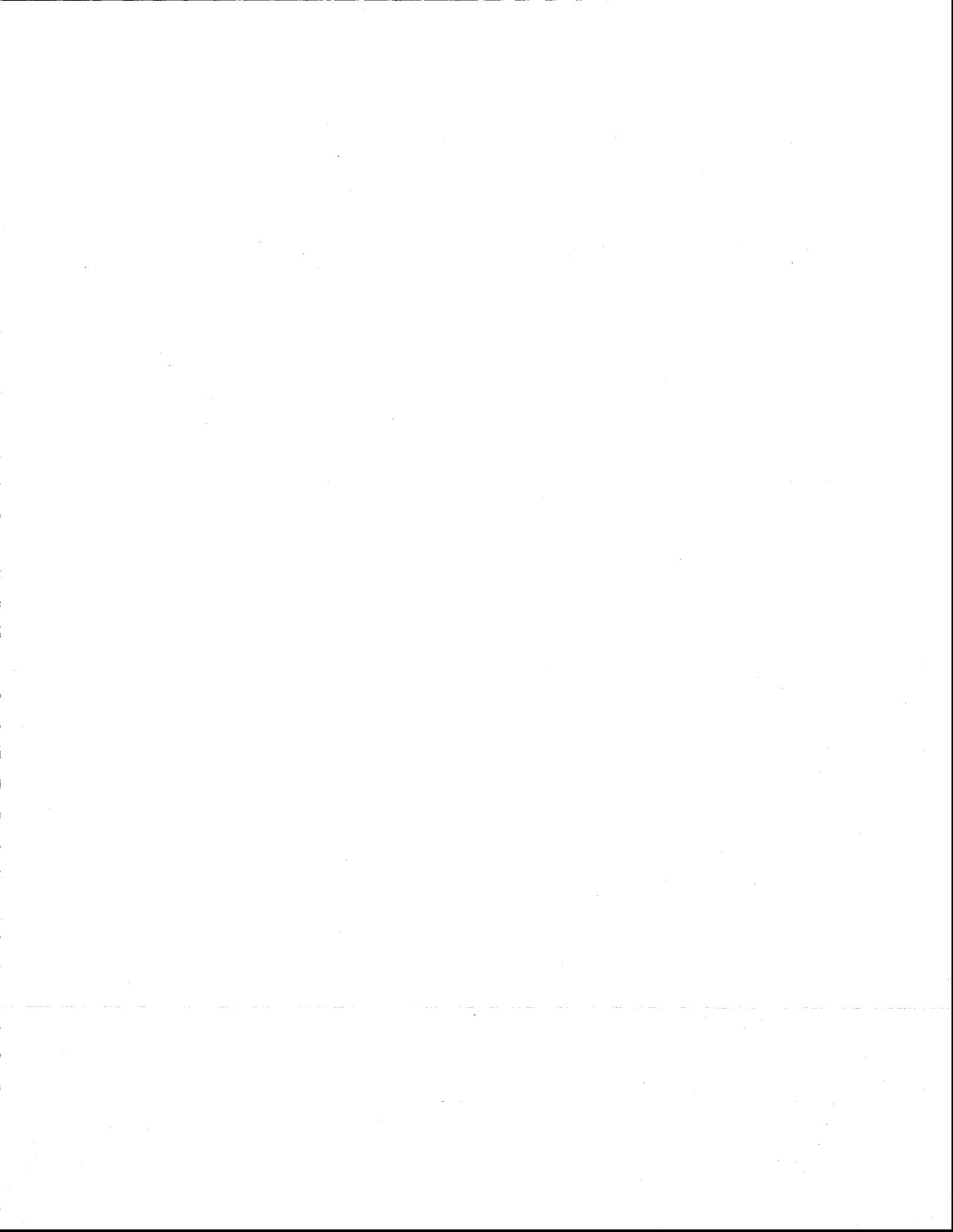
Respectfully submitted,

  
\_\_\_\_\_  
Harold J. Brubaker  
Speaker of the House

  
\_\_\_\_\_  
Marc Basnight  
President Pro Tempore

Cochairs  
Legislative Research Commission





1995-1996

LEGISLATIVE RESEARCH COMMISSION

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## PREFACE

The Legislative Research Commission, established by Article 6B of Chapter 120 of the General Statutes, is the general purpose study group in the Legislative Branch of State Government. The Commission is cochaired by the Speaker of the House and the President Pro Tempore of the Senate and has five additional members appointed from each house of the General Assembly. Among the Commission's duties is that of making or causing to be made, upon the direction of the General Assembly, "such studies of and investigations into governmental agencies and institutions and matters of public policy as will aid the General Assembly in performing its duties in the most efficient and effective manner" (G.S. 120-30.17(1)).

The Legislative Research Commission, prompted by actions during the 1995 Session, has undertaken studies of numerous subjects. These studies were grouped into broad categories and each member of the Commission was given responsibility for one category of study. The Cochairs of the Legislative Research Commission, under the authority of G.S. 120-30.10(b) and (c), appointed committees consisting of members of the General Assembly and the public to conduct the studies. Cochairs, one from each house of the General Assembly, were designated for each committee.

The study of Election Law Reform was authorized by Section 2.7 of Chapter 542 of the 1995 Session Laws. The relevant portions of Chapter 542 are included in Appendix A. The Legislative Research Commission authorized this study under authority of G.S. 120-30.17(1) and grouped this study in its Election Laws Reform area under the direction of Representative Connie Wilson. The Committee was chaired by Senator Wib Gulley and Representative Lanier Cansler. The full membership of the Committee is listed in Appendix B of this report. A committee notebook containing

the committee minutes and all information presented to the committee is filed in the Legislative Library.

## COMMITTEE PROCEEDINGS

January 10, 1996 Meeting

At its first meeting January 10, 1996, the Committee heard staff presentations about the National Voter Registration Act (NVRA), the Voting Rights Act of 1965, and the relationship between the two. Then the Committee considered the following issues that face the 1996 Short Session:

- \* The sunset of July 1, 1996, on the designation of the Employment Security Commission as a voter registration agency under the NVRA. (Appendix D)
- \* The need to clean up the 1994 legislation North Carolina passed to comply with the NVRA, particularly the need to re-enact the duty of county commissioners to fund their county boards of elections.
- \* How to update lists of registered voters under the NVRA. (See Appendix E.)
- \* Other NVRA-related issues such as the transfer voter and computerization.
- \* Litigation-related issues concerning absentee voting by persons whose religious convictions prevent them from voting when election day falls on a religious holiday (see Appendix C), and concerning the rotation of names on primary ballots (see Appendix K).

With regard to computerization, the Committee voted to ask its Co-Chairs to write a letter to the Subcommittee of the Joint Legislative Commission on Governmental Operations that was reviewing the funding of statewide computerization of voter registration, asking that that Subcommittee meet to review the issue. That letter is included at Appendix G.

February 7, 1996 Meeting

At its second meeting February 7, 1996, the Committee heard presentations concerning the rising cost of campaigns, the influence of money on campaigns, and proposals for dealing with the problem. Both Co-Chairs addressed the issue, as did Ms. Patricia Watts, representing a coalition of groups called the Alliance for Democracy. (See Appendix F.)

The Committee approved the religious-holiday absentee voting bill included as LEGISLATIVE PROPOSAL I.

The Committee heard a report concerning the experience of the Employment Security Commission as a voter registration agency. Mr. Mark Trogdon of the Fiscal Research Division reported that the U.S. Department of Labor had announced a change of policy that would allow ESC to use federal grant money for voter registration. (See Appendix D.)

It was announced that the U.S. Department of Justice had given its approval under the Voting Rights Act to North Carolina's plan to update its lists of registered voters under the NVRA. (See Appendix E.)

#### March 5, 1996 Meeting

At its third meeting on March 5, 1996, the Committee heard reports from Representative John Weatherly and Mr. Lee Mortimer, both members of the Committee, concerning proportional representation. Rep. Weatherly discussed his bill, House Bill 827, to prohibit limited voting and the extension of elected officials' terms. Mr. Mortimer discussed several methods of proportional representation, including limited voting, cumulative voting, and preference voting. Senator Gulley and Representative Cansler appointed Representative Weatherly and Mr. Mortimer to lead a Subcommittee on Alternative Voting Methods, with Ms. Sarah Gullledge and Representative John Rayfield as members. (See Appendix H.)

The Committee also heard from Ms. Candice Copas of the Libertarian Party concerning that party's legal efforts to liberalize the State's ballot access laws. (See Appendix I.)

The Committee heard from Mr. Eugene Hafer, an attorney and lobbyist, who urged clarification of the Campaign Finance Law regarding the time periods to be used for reporting and contribution limits.

Committee counsel presented five draft bills that had been requested:

1. Removal of the ESC Sunset. The Committee approved this bill and it is included as LEGISLATIVE PROPOSAL II.
2. Canvass Friday, not Thursday. The Committee approved this bill and it is included as LEGISLATIVE PROPOSAL III.
3. Split Shifts for Pollworkers. The Committee approved this bill and it is included as LEGISLATIVE PROPOSAL IV.
4. Pollworkers From Outside the Precinct. After debate, the bill was postponed until the next meeting.

5. Voter's Testimony Inadmissible. After debate, the bill was postponed until the next meeting.

#### April 3, 1996 Meeting

At its fourth meeting on April 3, 1996, the Committee considered a draft of the interim report to the 1996 Short Session, which had been sent to them the previous week. The draft contained the four LEGISLATIVE PROPOSALS that had been approved at previous meetings, plus four additional draft bills. The Committee on April 3 approved the following proposals for the Short Session:

- \* Precinct Officials From Outside the Precinct. After looking at a draft proposal to allow precinct officials and observers to be appointed from adjacent precincts, the Committee approved with some change an alternative suggested by Sen. Leslie Winner. Sen. Winner's proposal was to allow county boards of elections, after attempting to find precinct officials from within the precinct, to appoint officials from anywhere in the county as long as a majority of the chief judge/judges, and a majority of the assistants, were not from outside the precinct. This proposal is included as LEGISLATIVE PROPOSAL V.
- \* Voter's Testimony; New Election. Under this proposal, a county board of elections considering an election protest would be prohibited from accepting testimony from an ineligible voter as to how that voter voted in an election. If the number of ineligible voters casting votes was greater than the margin of victory (or the same as the margin of victory), the protester would have a right to a new election called (or a tie declared) by the State Board of Elections, unless the State Board had evidence, other than voters' testimony as to how they voted, that the ineligible voters changed the result. The Committee approved this proposal and it is included as LEGISLATIVE PROPOSAL VI. (See also Appendix L.)
- \* Cleanup of 1994 Legislation. Under this proposal, several corrections would be made to the 1994 legislation that brought North Carolina into compliance with the National Voter Registration Act. Among other things, the proposal would re-enact a provision that gave county commissioners the general duty to fund elections. The contents of the proposal were given approval by both houses of the General Assembly in 1995, but the bill was held up in conference because of a dispute over an amendment added by one house. The Committee approved re-endorsing the cleanup, and it is included as LEGISLATIVE PROPOSAL VII.

- \* Gifts from Federal PACs. Under this proposal, requested by Mr. Gary O. Bartlett, Executive Secretary-Director of the State Board of Elections, the State Board's rulings on contributions by political committees under federal law. The Committee approved that proposal, and it is included as LEGISLATIVE PROPOSAL VIII.

Mr. Mortimer, Co-Chair with Rep. Weatherly of the Subcommittee on Alternative Voting Systems, reported that that Subcommittee had met and recommended adding to the local option for modes of election for local boards the use of cumulative voting and preference voting. This proposal was approved by the full Committee and is included as LEGISLATIVE PROPOSAL IX. It is similar to Senate Bill 791, introduced by Sen. Gulley in 1995, except that limited voting, to which Rep. Weatherly objected, was removed.

One proposal included in the draft report, a bill to allow primary candidates to withdraw after the filing deadline, was not approved by the Committee. The Committee heard several ideas advocated, but did not vote on them:

- \* Rep. Frances Cummings advocated the elimination of straight-ticket voting. (See Appendix J.)
- \* Rep. Willis Brown offered the idea of four-year terms for legislators, perhaps combined with some other ideas.
- \* Mr. Charles Sutherland, the plaintiff in the lawsuit challenging the current law and practice on rotation of names on primary ballots, suggested ways in which the lawsuit could be settled. (See Appendix K.)

Co-Chairs Cansler and Gulley appointed a subcommittee to report to the Committee after the Short Session on ballot access. It included Sen. Winner, Reps. Weatherly and Rayfield, and Mr. Jerry Meek.

## FINDINGS AND RECOMMENDATIONS

### FINDING I -- RELIGIOUS HOLIDAYS AND ABSENTEE VOTING.

The Committee finds that municipal primaries sometimes occur on the Jewish High Holy Days, and that observant Jews are sometimes unable to vote at the polls on those days without violating the tenets of their religion. Members of other religious groups may experience the same problem. One logical solution--absentee voting--is technically not available to them, because a religious holiday is not among the excuses for allowing someone to vote absentee. The excuses that come closest are:

- \* That the voter will be sick or disabled on election day, or
- \* That the voter will be out of the county during the entire time to polls are open on election day.

Neither one reliably covers the religious holiday dilemma. The only way for the devout person in that situation to receive a ballot is to lie (a practice also typically frowned upon by religions). This situation is the subject of litigation in North Carolina. Eleven states provide for religious holidays as reasons for absentee voting. (See Appendix C.)

### RECOMMENDATION I

The Committee recommends that the justifications for receiving an absentee ballot be expanded to include the observance of a religious holiday on election day. (See LEGISLATIVE PROPOSAL I.)

### FINDING II -- ESC AS VOTER REGISTRATION AGENCY.

The Committee finds that the National Voter Registration Act (NVRA) requires every State to designate as a voter registration agency--in addition to the drivers license and public assistance agencies all States must designate--another agency of its choice. In 1994 North Carolina designated the Employment Security Commission as its optional agency, but sunset the designation January 1, 1996. The 1995 General Assembly, aware of the need either to remove the sunset or designate another agency, extended the sunset until July 1, 1996. The Committee finds that the Executive Secretary-Director of the State Board of Elections has called ESC the best agency in terms of competence in voter registration.

The alternative to removing the ESC sunset would be to designate another agency as the optional agency. The decision, however, would have to be precleared by the U.S. Department of Justice under the Voting Rights Act. That Department has already precleared the designation of ESC, and would likely compare another agency with ESC in terms of registration of the access it gives to minority voters.

The Committee finds that ESC's cost for registering voters is a matter of dispute. The agency has in the past been told that it could not use any of its federal grant money for the purpose of voter registration, but this year the U.S. Department of Labor has reversed that ruling and ESC may now use Wagner-Peyser funds for voter registration. (See Appendix D.)

## RECOMMENDATION II

The Committee recommends that the sunset on designation of ESC as a voter registration agency be removed permanently. It recommends that the agency be given the option of funding its voter registration through its federal grant or through the Special ESC Administration Fund, provided that ESC report annually on its spending to the Joint Legislative Commission on Governmental Operations and this fall to this Study Committee.

## FINDING III -- FRIDAY CANVASS.

The Committee finds that the current law concerning the canvass--official count--of an election has become outdated. The statutes require that the canvass be two days after the election. If the election is Tuesday, the canvass is Thursday. Increasingly, county boards of elections have tasks to complete after the election and before the canvass, such as the counting and approval of provisional ballots, that make the Thursday canvass a tight deadline.

## RECOMMENDATION III

The Committee recommends that the statutes be changed to set the canvass on the third day after an election rather than the second.

## FINDING IV -- SPLIT SHIFTS FOR PRECINCT OFFICIALS.

The Committee finds that some political parties and county boards of elections are having increasing trouble recruiting precinct officials. One problem is the long day--14 hours or longer--that precinct officials are expected to work. G.S. 163-47 requires that the chief judge and judges "shall remain at the voting place from the time fixed by law for the commencement of their duties there until they have completed all those duties, and they shall not separate nor shall any one of them leave the voting place except for unavoidable necessity." Most people of working age, male and female, have trouble breaking loose from job and family duties for such a long commitment two or three times a year. And retirees, increasingly the primary recruitment pool for precinct positions, often find the long day too

physically demanding. The Committee finds that there continues to be a valid rationale for the requirement that the chief judges and judges be together all day: Bipartisan presence is the best guarantee against fraud. But the Committee also finds that the demands of modern life require more flexibility in the staffing of the precincts.

#### RECOMMENDATION IV

The Committee recommends that county boards of elections be given specific discretion to allow precinct assistants to work less than the full day required of judges and chief judges.

#### FINDING V -- PRECINCT OFFICIALS FROM OUTSIDE THE PRECINCT.

The Committee finds that one of the reasons for the difficulty in finding precinct officials is the requirement that all officials of a precinct must be registered voters of that precinct. The Committee finds that the rationale for the requirement is valid:

- \* Precinct officials need to be people who are best able to recognize voters because they are their neighbors, and
- \* The polling place should be a friendly place for the voters, where they see their neighbors serving as officials.

But the Committee also finds that the county boards of elections need flexibility simply in order to staff the polls, especially in growing areas where new precincts have been created.

#### RECOMMENDATION V

The Committee recommends that the county board of elections be allowed to appoint precinct officials for a precinct who live in other precincts in the county:

- \* If they cannot find sufficient officials who live in the precinct; and
- \* If the outsiders do not constitute a majority of the chief judge and judges in a precinct, or a majority of the assistants in a precinct.

The Committee recommends that the county board also be authorized to appoint a group of election day emergency assistants to fill vacancies created by emergency vacancies among precinct officials.

## FINDING VI -- TESTIMONY OF INELIGIBLE VOTER.

The Committee finds that current caselaw supports an undesirable legal practice. When the number of ineligible voters casting votes in a contest exceeds the margin of victory, the burden is on the person protesting the election to put forth evidence proving that the ineligible voters cast their votes in such a way as to change the outcome, and they are allowed to carry that burden by offering the testimony of those ineligible voters as to how they voted. (Appendix L.) The opportunity and temptation for fraud and perjury is self-evident. Simply to prohibit county boards of elections from accepting the testimony of ineligible voters about their votes, however, might leave a person protesting the election described above with no way of carrying the burden required to get a new election.

## RECOMMENDATION VI

The Committee recommends that the law be changed:

1. To prohibit the county boards of elections from accepting the testimony of ineligible voters as to how they voted; and
2. To give the protester of an election the right to a new election (or a declaration of a tie) if the number of ineligible voters exceeds (or equals) the margin of victory, unless the State Board of Elections has evidence, other than the ineligible voters' testimony as to how they voted, that the ineligible voters did not affect the election's outcome.

The Committee recommends that, unless all parties in interest agree otherwise, any new election shall be conducted throughout the entire jurisdiction of the office.

## FINDING VII -- NVRA CLEANUP LEGISLATION.

The Committee finds that, when the General Assembly enacted legislation in 1994 to bring North Carolina into compliance with the National Voter Registration Act (NVRA), certain drafting omissions were made that needed to be corrected. Most importantly, the 1994 legislation repealed and inadvertently failed to re-enact the general duty of county commissioners to fund the legal duties of their boards of elections. The only reason the repeal of the county commissioners' duty has not gone into effect is that it has not been precleared by the U.S. Department of Justice under Section 5 of the Voting Rights Act. The submission of that part of the 1994 act was withdrawn after the mistaken repeal was discovered. While that withdrawal does preserve the current law, it is undesirable as a general rule for the

General Assembly to rely on the Voting Rights Act preclearance process to take care of its legislative responsibilities. The LRC's Election Laws Review Committee recommended the cleanup contained in Legislative Proposal VII of this report to the 1995 General Assembly. The contents of that proposal were overwhelmingly approved by both the Senate and the House, but the bill (Senate Bill 58) was held up in conference because of a dispute between the bodies over an amendment adding in the House requiring voters to present identification at the polls.

#### RECOMMENDATION VII

The Committee recommends that the corrections to the 1994 NVRA legislation contained in Legislative Proposal VII be made. The Committee does not take a position on the amendment to Senate Bill 58 that is the subject of the conference dispute.

#### FINDING VIII -- CODIFICATION OF RULING ON FEDERAL PAC GIFTS.

The Committee finds that confusion may exist about the right of political action committees regulated by Federal law to contribute to political committees regulated by North Carolina law. The two regulatory schemes are similar but not exactly the same, and their interaction has sometimes been clouded by uncertainty. The State Board of Elections issued rulings in the 1980s to the effect that Federal PACs could contribute to North Carolina political committees if the federal committee:

1. Has registered with the State Board of Elections;
2. Complies with reporting requirements specified by the State Board; and
3. Has appointed a North Carolina resident as deputy or assistant treasurer and given that official authority to produce whatever records of political activity in North Carolina the State Board deems necessary.

#### RECOMMENDATION VIII

The Committee recommends that the rulings of the State Board of Elections concerning contributions by Federal committees to State committees be codified into the General Statutes. See Legislative Proposal VIII.

#### FINDING IX -- MODIFIED AT-LARGE VOTING SYSTEMS.

The Committee finds that there is significant interest in the use of voting methods that afford minorities of all sorts the ability to have a voice in choosing representatives without the drawing of gerrymandered districts. Among the methods that have been proposed are limited voting, cumulative voting, and preference voting. (For an explanation of these methods, see Appendix H.) Of those three, significant opposition has arisen only to limited voting. The Committee finds that an appropriate vehicle for experimenting with these methods in North Carolina is the local-option law that appears in both the County Government and the City Government chapters of the General Statutes. The local-option law allows the local governing board (Board of County Commissioners or City Council) to change its own mode of election, selecting from a menu of choices listed in the law, including at-large representation, district representation, partisan primary and election, nonpartisan plurality election, etc. The county local option law requires such a change to be initiated by the commissioners and approved by the county's voters in referendum. The city local option law allows the City Council to make the change, subject to a referendum only if 10% of the voters petition for a vote. The city law, unlike the county law, also allows the voters to initiate the change by petition, bypassing the City Council. (There is no local option concerning the modes of election of school boards; therefore this proposal does not deal with school boards.) The Committee finds that adding cumulative and preference voting to the menu of local options would be an appropriate use of local governments as the "laboratories of democracy" to which early 20th century reformers referred. Only those localities with the popular willingness and technical/financial capability to try these methods would be likely to do so.

#### RECOMMENDATION IX

The Committee recommends that cumulative voting and preference voting, but not limited voting, be added to the menu of choices available to counties and cities in election of Board of County Commissioners and City Councils. See Legislative Proposal IX.

APPENDIX A

CHAPTER 542

AN ACT TO AUTHORIZE STUDIES BY THE LEGISLATIVE RESEARCH COMMISSION, TO CREATE AND CONTINUE VARIOUS COMMISSIONS, TO DIRECT STATE AGENCIES AND LEGISLATIVE OVERSIGHT COMMITTEES AND COMMISSIONS TO STUDY SPECIFIED ISSUES, TO MAKE VARIOUS STATUTORY CHANGES, AND TO MAKE TECHNICAL CORRECTIONS TO CHAPTER 507 OF THE 1995 SESSION LAWS.

The General Assembly of North Carolina enacts:

PART I.-----TITLE

Section 1. This act shall be known as "The Studies Act of 1995".

PART II.-----LEGISLATIVE RESEARCH COMMISSION

Sec. 2.1. The Legislative Research Commission may study the topics listed below. When applicable, the 1995 bill or resolution that originally proposed the issue or study and the name of the sponsor is listed. The Commission may consider the original bill or resolution in determining the nature, scope, and aspects of the study. The topics are:

- . . .
- (8) Election laws reform (S.B. 982 - Plexico; H.B. 922 - Cansler; H.B. 858 - Miner)
- . . .

Sec. 2.8. Committee Membership. For each Legislative Research Commission committee created during the 1995-96 biennium, the cochairs of the Legislative Research Commission shall appoint the committee membership.

Sec. 2.9. Reporting Dates. For each of the topics the Legislative Research Commission decides to study under this act or pursuant to G.S. 120-30.17(1), the Commission may report its findings, together with any recommended legislation, to the 1996 Regular Session of the 1995 General Assembly, if approved by the cochairs, or the 1997 General Assembly, or both.

Sec. 2.10. Bills and Resolution References. The listing of the original bill or resolution in this Part is for reference purposes only and shall not be deemed to have incorporated by reference any of the substantive provisions contained in the original bill or resolution.

Sec. 2.11. Funding. From the funds available to the General Assembly, the Legislative Services Commission may allocate additional monies to fund the work of the Legislative Research Commission....

**PART XXVI.-----EFFECTIVE DATE**

Sec. 26.1. This act is effective upon ratification.

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1995-96**

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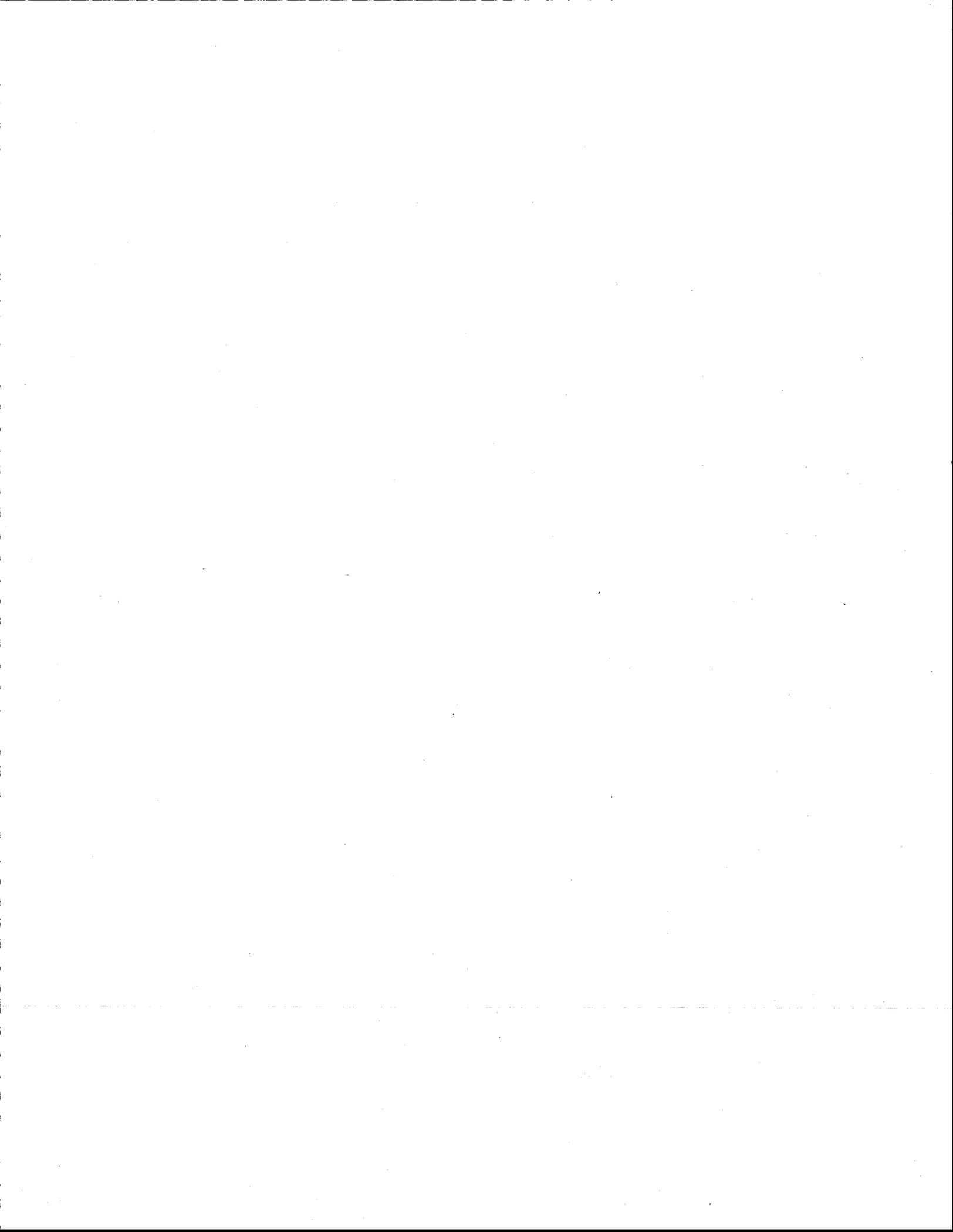
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**Clerk**

Ms. Betty Harrison  
Room 420/Legislative Office Building  
(919) 715-3001



## I N T E R O F F I C E M E M O R A N D U M

Date: 10-Jan-1996 12:32pm EST  
 From: Gerry F. Cohen  
 GERRY C  
 Dept: Bill Drafting  
 Tel No: (919)733-6660

TO: Election Law Commission

( PAPER MAIL )

Subject: Religious Absentee Excuse Laws in Other States

I did a search on LEXIS for absentee voting excuses, and came up with the following 11 states that allow absentee voting for religious reasons:

CONNECTICUT: Conn. Gen. Stat. §9-135 "the tenets of his religion forbid secular activity on the day ..."

DELAWARE: 15 Del. C. §5502 "such person is unable to vote at a certain time or on a certain day due to the tenets or teachings of his religion."

FLORIDA: Fla. Stat. §97.021 "on account of the tenets of his religion, cannot attend the polls on the day ..."

ILLINOIS: 10 ILCS 5/19-1 "because of ... the tenets of his religion in the observance of a religious holiday ... will be unable to be present at the polls on the day ..."

LOUISIANA: La. R.S. 18:1303 "a person who declares to the registrar that tenets of his religion require his attendance at religious services on election day, prevent him from affixing his signature on any ballot or registration rolls on an election day, or otherwise prevent him from casting his ballot on election day"

MICHIGAN: MSA §6.1758 "Who, on the account of the tenets of his religion, cannot attend the polls on the day of the election."

NEBRASKA: R.R.S. Neb. §32-947 "cannot go to the polling place on the day of the election because of the tenets of my religion"

NEW JERSEY: N.J. Stat. §19:57-2 "because of the observance of a religious holiday pursuant to the tenets of his religion ... will be unable to cast his ballot at the polling place ... on the day of the election."

NEW MEXICO: N.M. Stat. Ann. §1-22-19 "who cannot attend his precinct polling place because of the tenets of his religion ..."

RHODE ISLAND: R.I. Gen. Laws §17-20-13 "Because tenets of my religion forbid secular activity including voting on the day of election."

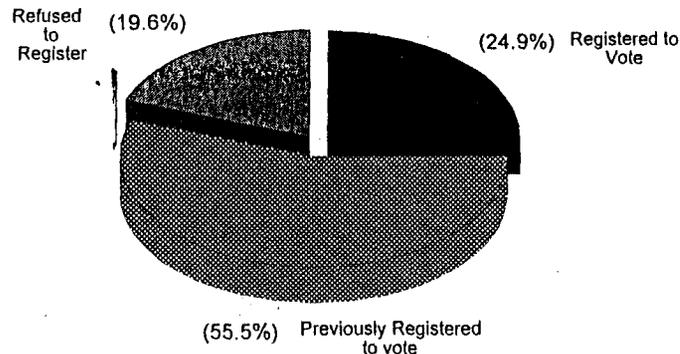
SOUTH DAKOTA: S.D. Codified Laws §12-19-1 "because of ... the observance of a religious holiday pursuant to the tenets of his religion ... will be unable to cast his ballot at the polling place ... on the day of the election ..."

New York has an interesting provision providing for voter registration to be held at veterans' hospitals on the seventh Thursday before each general election, except if that day is Yom Kippur, Rosh Hashanah, Simchas Torah, Shmini Atzereth, or Succoth, it is held on the next business day which is not such a religious holiday.

Employment Security Commission (ESC)  
Voter Registration Summary

Column No.	1	2	3	4	5	6	7	8	9
	Activity Levels				Workload Levels		Expenditures	Unit Costs	
1995 (11 Months)	Registered to Vote	Refused to Register	Previously Registered to Vote	Total Registration Activity	Hours Spent on Voter Registration	Minutes Spent Per Applicant (col #5/col #4)*60	Total Monthly Expenditures on Voter Registration	Cost Per Voter Registered (col #7/col #1)	Cost Per All Voter Registration Activity (col #7/col #4)
January	3,876	2,691	7,192	13,759	1,157.60	5.05	\$30,738	\$7.93	\$2.23
February	3,734	2,765	7,659	14,158	1,863.20	7.90	\$42,519	\$11.39	\$3.00
March	3,608	2,857	7,929	14,394	2,135.15	8.90	\$43,018	\$11.92	\$2.99
April	2,886	2,366	6,647	11,899	1,799.10	9.07	\$43,427	\$15.05	\$3.65
May	3,102	2,525	7,213	12,840	2,084.90	9.74	\$41,194	\$13.28	\$3.21
June	3,218	2,579	7,499	13,296	2,028.70	9.15	\$42,950	\$13.35	\$3.23
July	3,057	2,510	7,556	13,123	1,793.35	8.20	\$42,295	\$13.84	\$3.22
August	3,403	2,664	7,595	13,662	1,970.60	8.65	\$42,945	\$12.62	\$3.14
September	2,860	2,232	6,429	11,521	1,827.60	9.52	\$43,623	\$15.25	\$3.79
October	3,167	2,496	7,160	12,823	1,940.10	9.08	\$43,561	\$13.75	\$3.40
November	3,096	2,705	7,504	13,305	1,723.20	7.77	\$43,710	\$14.12	\$3.29
<b>Totals</b>	<b>36,007</b>	<b>28,390</b>	<b>80,383</b>	<b>144,780</b>	<b>20,323.50</b>		<b>\$459,980</b>		
<b>Averages (Monthly)</b>	<b>3,273</b>	<b>2,581</b>	<b>7,308</b>	<b>13,162</b>	<b>1,847.69</b>	<b>8.42</b>	<b>\$41,816</b>	<b>\$12.77</b>	<b>\$3.10</b>

Activity Levels by Percent



ESC Voter Registration Activities -- Fiscal Issues

- \* Authorization for ESC to conduct voter registration activities sunsets July 1, 1996 ( Attachment 1, HB 230, Section 25.10).
- \* Federal Funds allocated to ESC cannot be used to fund voter registration activities (Attachment 2).
- \* The estimated annualized expenditures incurred by ESC for voter registration activities is \$501,792.
- \* The current funding source for voter registration at ESC is the Worker Training Trust Fund: 1/1/95 to 12/31/95 (\$600,000) 1/1/96 to 6/30/96 (\$300,000).
- \* Funding for voter registration at ESC expires June 30, 1996.

<b>U. S. Department of Labor</b> Employment and Training Administration Washington, D.C. 20210	CLASSIFICATION UI/ES
	CORRESPONDENCE SYMBOL TEURL/TEESS
	DATE January 26, 1996

DIRECTIVE : GENERAL ADMINISTRATION LETTER NO. 2-96

TO: : ALL STATE EMPLOYMENT SECURITY AGENCIES

FROM: : *Barbara Ann Farmer*  
 BARBARA ANN FARMER  
 Administrator  
 for Regional Management

SUBJECT : Funding of State Employment Security Agency  
 Voter Registration Activities by the U.S.  
 Department of Labor

1. Purpose. To advise State employment security agencies (SESAs) of options regarding the use of unemployment compensation (UC) administrative grants, Reed Act funds, and Wagner-Peyser (W-P) grants to fund voter registration activities in State UC and Employment Service (ES) offices under the National Voter Registration Act (NVRA) of 1993, P.L. 103-31.

2. References. The National Voter Registration Act of 1993, P.L. 103-31; Sections 302(a), 303(a)(8), 303(a)(9), and 901(c)(1)(A)(i) of the Social Security Act (SSA); the Reed Act (Section 903(c), SSA); the W-P Act, 29 U.S.C. Section 49; and OMB Circular A-87.

3. Background. The NVRA is designed to increase the number of eligible citizens who register to vote in elections for Federal office by means of expanding the number of forums which provide voter registration services. Section 7 of the NVRA provides for specific voter registration agencies. Under Section 7(a)(2), States must designate as voter registration agencies all offices that provide public assistance (i.e., welfare) and all offices that provide State-funded programs primarily engaged in serving persons with disabilities. Section 7(a)(3) provides for other voter registration agencies, in relevant part, as follows:

REVISIONS None	<b>RECEIVED</b> JAN 31 1996 <b>FINANCE &amp; BUDGET</b>	EXPIRATION DATE January 31, 1997
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(3) (A) In addition to voter registration agencies designated under paragraph (2), each State shall designate other offices within the State as voter registration agencies.

B) Voter registration agencies designated under subparagraph (A) may include--

(i) State or local government offices such as public libraries, public schools, . . . unemployment compensation offices, and offices not described in paragraph (2) (B) that provide services to persons with disabilities. [Emphasis added.]

Thus, Section 7(a) (3) of the NVRA permits, but does not mandate, States to designate State UC offices as voter registration agencies. (See paragraphs 4b and 5b of this GAL for discussion of the designation of ES offices as voter registration agencies.) Concerns have been raised by Federal and State officials and public interest organizations about whether Federal funding would be available for voter registration activities in State UC and ES offices. This issuance addresses this question.

4. Applicable Sections of the Law.

a. SSA. Title III, SSA, governs the use of Federal grant funds for the administration of the unemployment compensation programs by the States.

Section 302(a), SSA, addresses the uses of UC granted funds as follows:

The Secretary of Labor shall from time to time certify to the Secretary of the Treasury for payment to each State which has an unemployment compensation law approved by the Secretary of Labor under the Federal Unemployment Tax Act, such amounts as the Secretary of Labor determines to be necessary for the proper and efficient administration of such law during the fiscal year for which such payment is to be made.

Section 303(a) (8), SSA, requires--

the expenditure of all moneys received pursuant to section 302 of this title solely for the purposes and in the amounts found necessary by the Secretary of Labor for the proper and efficient administration of such State law.

Section 303(a)(9), SSA, requires--

. . . the replacement, within a reasonable time, of any moneys received pursuant to section 302 of this title, which, because of any action or contingency, have been lost or have been expended for purposes other than, or in amounts in excess of, those found necessary by the Secretary of Labor for the proper administration of such State law.

Section 901(c)(1), SSA, authorizes to be made available for expenditure out of the employment security administration account, for each fiscal year--

(A) such amounts . . . as the Congress may deem appropriate for the purpose of--

(i) assisting the States in the administration of their unemployment compensation laws as provided in title III (including administration pursuant to agreements under any Federal unemployment compensation law).

(ii) the establishment and maintenance of systems of public employment offices in accordance with the Act of June 6, 1933, as amended (29 U.S.C., secs. 49-49n) . . .

b. Reed Act and W-P Act Funds. SESAs include both UC and public ES offices. W-P Act grants are distinct from SSA Title III grants.

While the W-P Act does not have limitations on the expenditure of administrative grant funds as specific as those imposed on UC administrative grants, these grants are subject to the same type of restrictions discussed above in connection with UC grants. First, as with Title III grants, W-P Act funds are subject to the restriction of 31 U.S.C. Section 1301(a) that "appropriations shall be applied only to the objects for which the appropriations were made except as otherwise provided by law." Thus, W-P Act funds may be used only for the purposes expressly authorized by law. Second, the limitations of OMB Circular A-87, which addresses cost principles for State and local governments, apply to W-P monies as well as Title III grants. In particular, Attachment A, Section C.1.a. of the Circular requires that to be allowable under a grant, a cost must be necessary for the proper and efficient performance and administration of Federal awards.

##### 5. Interpretation and Discussion.

a. SSA. No chargeable costs against the Title III grant are permitted to fund voter registration activities.

Although Congress authorized States to designate UC offices as voter registration agencies, this authorization was not accompanied by an amendment to the Title III, SSA, prohibitions against expenditure of grant monies for purposes other than the proper and efficient administration of the State's UC law. Thus, Title III grant monies may not be used to carry out the purposes of the NVRA. However, in the event a State chooses to designate a State UC office as a voter registration agency, the Department has determined that it will not disallow costs or raise conformity or substantial compliance issues under Sections 303(a)(1), 303(a)(8), and 303(a)(9), SSA, unless the designation of such an agency or the performance of such voter registration functions results in any additional charges to UC grant funds or otherwise impedes the operations of that UC office. Therefore, some voter registration activities may be conducted in State UC offices to the extent that the States neither incur additional chargeable costs in the use of existing UC-funded resources nor allow such activities to compromise UC operations. To the extent that additional costs are incurred (even if they appear to be de minimis costs), States must fund such additional costs from non-UC administrative grant sources. Failure to do so could result in disallowed costs and other appropriate remedies.

b. W-P Act and Reed Act Funds. States may, under the limitations described below, use Reed Act and Section 7(a) and (b) W-P Act funds to carry out the purposes of the NVRA in SESAs designated as voter registration agencies.

(1) W-P Funds. Currently W-P funds, i.e., ES grants, are used for a wide variety of activities all of which in some way relate to the basic labor exchange functions of an ES agency. The W-P Act authorizes the appropriation of funds "necessary to carry out the purposes of this Act." Since the purposes of the Act are "to promote the establishment and maintenance of a national system of public employment offices . . .", 29 U.S.C. Section 49, (emphasis added), funds under the Act may be used to fund ES office administrative expenses.

States may, under the NVRA, designate any of a variety of public offices to conduct voter registration activities, including ES offices statewide. The Department has determined that, if an ES office is designated under the NVRA, then voter registration is a legitimate ES administrative expense chargeable to ES grants.

This position is consistent with Congress' recognition in the NVRA that voter registration is an important Federal priority and that Federal agencies are, therefore, to cooperate with the States as much as possible regarding the designation of voter registration agencies. Further support for this position is found in Section 7(a)(3)(B) of the W-P Act authorizing SESAs to use ES grant monies for "developing linkages between services funded under this Act and related Federal or State legislation." Congress' purpose in enacting the NVRA was to require States to

make access to voter registration widely available, thus providing sufficient linkage for this purpose.

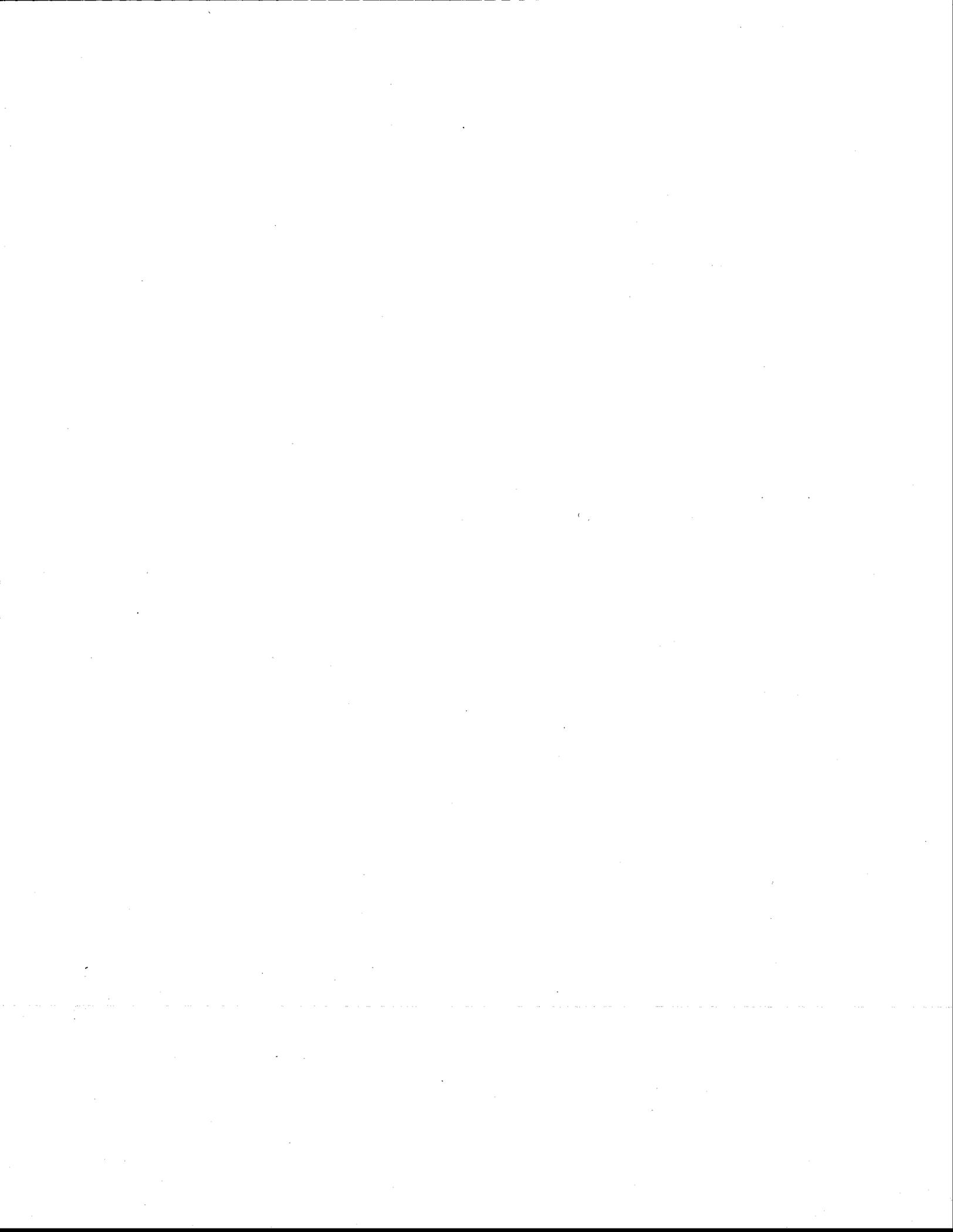
Therefore, if a State elects to use SESAs for voter registration activities, the U.S. Department of Labor permits the use of Section 7(a) and (b) W-P Act funds for voter registration activities. However, SESAs are not required to use ES grants for voter registration activities. If ES grants are used, SESAs shall act prudently in using such resources to ensure the integrity of the States' basic labor exchange function.

(2) Reed Act Funds. Section 903(c)(2), SSA, provides that "a State may, pursuant to a specific appropriation made by the legislative body of the State, use money withdrawn from its account in the payment of expenses incurred by it for the administration of its unemployment compensation law and public employment offices . . . ." Under the SSA, voter registration activities are not necessary for the proper and efficient administration of the State's UC law. Since, however, Reed Act monies may be used to pay expenses of administration of public employment offices, if an activity is fundable under the W-P Act, then it may be paid for from Reed Act monies. Therefore, Reed Act monies may be used to fund voter registration costs under the same circumstances as W-P funds. As discussed above, these activities are fundable under the W-P Act. Since these activities are allowable costs under the W-P Act, if ES offices are designated as voter registration agencies, voter registration activities may be funded with Reed Act monies (if any are available). States are reminded that if Reed Act funds are used for administrative costs such as voter registration activities, the expenditure is not recoverable as is the case when the funds are used to purchase a building and amortized using UC or W-P grant funds.

(3) Summary. In accordance with the Department's interpretation and consistent with W-P requirements, SESAs may use ES grants or Reed Act funds for voter registration activities in the following situations, but are not limited to these situations: (1) where voter registration forms and collection points are provided at an ES office, (2) where voter registration tables are set up in the lobby areas of the ES offices, or (3) where ES staff are available to assist voter registration activities. Further, if UC staff in an UC office co-located with an ES office, were to assist voter registration activities which created chargeable costs, such costs may be chargeable to the ES grant or the Reed Act appropriation. In no circumstances may additional costs be charged to the UC grant. However, the Department of Labor will not disallow costs or raise substantial compliance issues unless the designation of UC offices or the performance of voter registration activities results in additional charges to UC grant funds or otherwise impedes the operation of such offices.

6. Action Required. SESAs in States where the public employment service offices and UC offices have been designated as voter registration agencies are requested to review existing and proposed procedures to ensure that any expenditure of funds for such activities are consistent with the guidance provided in this issuance.

7. Inquiries. Please direct inquiries to the appropriate Regional Office.



## § 163-82.14. List maintenance.

(a) Uniform Program. — The State Board of Elections shall adopt a uniform program that makes a reasonable effort:

- (1) To remove the names of ineligible voters from the official lists of eligible voters, and
- (2) To update the addresses and other necessary data of persons who remain on the official lists of eligible voters.

That program shall be nondiscriminatory and shall comply with the provisions of the Voting Rights Act of 1965, as amended, and with the provisions of the National Voter Registration Act. The State Board of Elections, in addition to the methods set forth in this section, may use other methods toward the ends set forth in subdivisions (1) and (2) of this subsection, including address-updating services provided by the Postal Service. Each county board of elections shall conduct systematic efforts to remove names from its list of registered voters in accordance with this section and with the program adopted by the State Board.

(b) Death. — The Department of Environment, Health, and Natural Resources, on or before the fifteenth day of March, June, September, and December, shall furnish free of charge to each county board of elections a certified list of the names of deceased persons who were residents of that county. The Department of Environment, Health, and Natural Resources shall base each list upon information supplied by death certifications it received during the preceding quarter. Upon the receipt of the certified list, the county board of elections shall remove from its voter registration records any person the list shows to be dead. The county board need not send any notice to the address of the person so removed.

(c) Conviction of a Felony. —

(1) Report of Conviction Within the State. — The clerk of superior court, on or before the fifteenth day of March, June, September, and December of every year, shall report to the county board of elections of that county the name, county of residence, and residence address if available, of each individual against whom a final judgment of conviction of a felony has been entered in that county in the preceding calendar quarter. Any county board of elections receiving such a report about an individual who is a resident of another county in this State shall forward a copy of that report to the board of elections of that county as soon as possible.

(2) Report of Federal Conviction. — The Executive Secretary-Director of the State Board of Elections, upon receipt of a notice of conviction sent by a United States Attorney pursuant to section 8(g) of the National Voter Registration Act, shall notify the appropriate county boards of elections of the conviction.

(3) County Board's Duty Upon Receiving Report of Conviction. — When a county board of elections receives a notice pursuant to subdivision (1) or (2) of this subsection relating to a resident of that county and that person is registered to vote in that county, the board shall, after giving 30 days' written notice to the voter at his registration address, and if the voter makes no objection, remove the person's name from its registration records. If the voter notifies the county

board of elections of his objection to the removal within 30 days of the notice, the chairman of the board of elections shall enter a challenge under G.S. 163-85(c)(5), and the notice the county board received pursuant to this subsection shall be prima facie evidence for the preliminary hearing that the registrant was convicted of a felony.

(d) Change of Address. — A county board of elections shall conduct a systematic program to remove from its list of registered voters those who have moved out of the county, and to update the registration records of persons who have moved within the county. The county board shall remove a person from its list if the registrant:

(1) Gives confirmation in writing of a change of address for voting purposes out of the county. "Confirmation in writing" for purposes of this subdivision shall include:

- a. A report to the county board from the Department of Transportation or from a voter registration agency listed in G.S. 163-82.20 that the voter has reported a change of address for voting purposes outside the county;
- b. A notice of cancellation received under G.S. 163-82.9; or
- c. A notice of cancellation received from an election jurisdiction outside the State.

(2) Fails to respond to a confirmation mailing sent by the county board in accordance with this subdivision and does not vote or appear to vote in an election beginning on the date of the notice and ending on the day after the date of the second general election for the United States House of Representatives that occurs after the date of the notice. A county board sends a confirmation notice in accordance with this subdivision if the notice:

- a. Is a postage prepaid and preaddressed return card, sent by forwardable mail, on which the registrant may state current address;
- b. Contains or is accompanied by a notice to the effect that if the registrant did not change residence but remained in the county, the registrant should return the card not later than the deadline for registration by mail in G.S. 163-82.6(c)(1); and
- c. Contains or is accompanied by information as to how the registrant may continue to be eligible to vote if the registrant has moved outside the county.

A county board shall send a confirmation mailing in accordance with this subdivision if the registrant remains on the list, the registrant has not voted in two successive presidential elections or in any election in between, and the county board has not confirmed the registrant's address by another means. The county board may send a confirmation mailing in accordance with this subdivision if the registrant has been identified as residing outside the county through change-of-address information supplied by the Postal Service through its licensees. (1953, c. 843; 1955, c. 800; 1963, c. 303, s. 1; 1965, c. 1116, s. 1; 1967, c. 775, s. 1; 1973, c. 793, ss. 25, 28; c. 1223, s. 4; 1975, c. 395; 1977, c. 265, s. 3; 1981, c. 39, s. 1; c. 87, s. 1; c. 308, s. 1; 1983, c. 411, ss. 1, 2; 1985, c. 211, ss. 1, 2; 1987, c. 691, s. 1; 1993 (Reg. Sess., 1994), c. 762, s. 2.)



## STATE BOARD OF ELECTIONS

133 Fayetteville Street Mall  
Suite 100  
Raleigh, North Carolina 27601

GARY O. BARTLETT  
Executive Secretary-Director

December 1, 1995

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(919) 733-7173  
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Elizabeth Johnson, Acting Chief  
Voting Section, Civil Rights Division  
U.S. Department of Justice  
Post Office Box 66128  
Washington, D.C. 20035

Re: File Nos. 94-3240 and 95-2375  
Additional information requested in October 3, 1995 letter

Dear Ms. Johnson:

The purpose of this letter is two fold: One, to respond to the questions outlined in your October 3, 1995 letter concerning Section VII of the voter registration "Policies and Procedures" manual and provisions contained in Chapter 762 of the North Carolina General Statutes for identification and removal of ineligible voters, and two, to submit for your consideration a redraft of the List Maintenance Procedures for removal of ineligible voters. The first section of this letter will provide answers to your questions in the order that they were presented. The second section of this letter will include the rewritten pages of the "Policies and Procedures" manual, detailing the proposed process by which ineligible voters will be identified and removed. Please accept section two of this letter as a replacement for the previous submission of List Maintenance Procedures.

### Section One—Questions regarding previous submission of list maintenance procedures

- 1. For each county covered under Section 5 and for each year between 1985 and 1993, provide the total number of (a) registered voters, (b) black voters, and (c) American Indian voters, prior to any purge for nonvoting. Provide the number of registered voters in each of these categories who were purged that year for nonvoting. To the extent this information is available only in part, please provide what is available; to the extent this information is not available separately by year, cumulative totals should be provided.*

This information is contained in two tables, immediately following. Table One, *Voter Registration Statistics*, includes voter registration figures for each of the North Carolina counties covered under Section 5 of the Voting Rights Act. The registration figures have been included by race. Attachment A includes complete voter registration statistics for the years 1985-1993. Table Two, *Purge Statistics*, includes the 1988 and 1992 purge statistics for the same forty counties. Where possible, the figures are included by race. Previous North Carolina law provided for a voter registration purge every four years, following the Presidential election year; therefore, no purge statistics are available for the other years between 1985 and 1993.

2. *Any reports, studies, analyses, or data regarding the degree to which mail in North Carolina is mistakenly returned as undeliverable by the Postal Service, including the degree to which this occurs in particular geographic areas (e.g., counties, municipalities, zip codes).*

Staff at the State Board of Elections and the Legislative Research Division of the General Assembly have previously discussed this question with Ms. Trisha Tingle, U.S. Department of Justice. As agreed in those conversations, our office is providing the resource information necessary to obtain an assessment of the service provided by the Postal Service.

Information regarding the degree to which mail in the State is mistakenly returned as undeliverable by the Postal Service can be provided by the county boards of elections. Each county is responsible for mailings associated with voter registration activities, and each county deals independently with their local Post Offices. Enclosed as Attachment B is a county board roster, listing the contact name, address and phone number for each of the county board offices.

North Carolina currently has four Business Mail Entry Centers, which handle bulk and nonprofit mail. Below is a list of these centers, with a contact name and phone number. These individuals may be able to provide helpful information.

Keith Johnson  
Manager, Business Mail Entry  
2901 Interstate 85  
Charlotte, NC 28228-9979  
704-393-4420

Brenda Morton  
Manager, Business Mail Entry  
PO Box 27499  
Greensboro, NC 27420  
910-668-1250

Carol Harless  
Mail Acceptance Specialist  
2901 Interstate 85 South  
Charlotte, NC 28228  
704-393-4420

O.B. Akinwole  
Mail Acceptance Specialist  
310 New Bern Avenue  
Raleigh, NC 27676  
919-420-5192

3. *An explanation of how, and for what period of time, the list of "removed voters" will "remain accessible", and how voters who have not moved out of the county will be informed of their right to vote a provisional ballot. State whether the complete list of "removed voters" will be available at each polling place.*

As of this date, all 100 counties in North Carolina have automation levels capable of maintaining computerized voter registration databases. Under the new voter registration laws, removed voters in most counties will be maintained within the computer database, using fields designated for removal reason codes. This will allow county board staff to easily generate a list of removed voters for use on election day. The list of removed voters would be continually changing, as county board staff processes daily transactions and notices, canceling records for individuals who have moved out of the county, been convicted of a felony or died, and reactivating records for persons appearing to vote or contacting the board of elections office.

The decision to keep the list of removed voters at the polling place will be made at the local level. We approve election day procedures developed by county boards that comply with the fundamental guidelines present in our General Statutes and the Policies and Procedures manual. Some counties prefer to have precinct officials call the county board office before proceeding with the steps for fail-safe voting, others prefer to give precinct officials all the tools necessary to carry through with the fail-safe voting procedures without calling the office. In the latter case, the county board staff must provide the precinct officials with the list of removed voters in order for those officials to efficiently conduct the fail-safe voting procedures. In the first case, the county board staff would retain the list of removed voters in the office, and would refer to that list as the precinct officials call.

Under North Carolina General Statutes §163-33(8), county boards of elections are required to provide a notice of election, prior to the close of the registration books and in a newspaper of general circulation (text of N.C.G.S. 163-33(8) is enclosed in Attachment D). We will instruct the counties to include in that notice the availability of provisional ballot procedures on election day. We have determined this to be the most effective method of providing notice to those registrants on the *inactive* and *removed lists*. The county board records obviously contain inaccurate or incomplete mailing information, proven by previously returned mailings. Notices of upcoming elections sent to those addresses would no doubt be returned undeliverable.

4. *Describe what consequences flow from placement of voters on "inactive" status, other than risk of removal for failure to have contact with the county board of elections or vote in the period including the subsequent two regular federal elections. For example, would mailings from the county board of elections concerning polling place changes or special elections exclude "inactive" voters? Are "inactive voters" counted in determinations whether to add, eliminate, or redraw voting precincts?*

As stated in the House Report, pages 16-17, on the National Voter Registration Act of 1993, using the *inactive* status

"permits the State to decline to use these names in performing the type of routine, administrative responsibilities that do not impair the right of such voters to vote as set forth in the Act, and as protected by the Voting Rights Act. For example, those who have failed to respond to a Section 8(d)(2) notice need not be included for administrative purposes in determining the number of signatures that may be required under State law for ballot access, the number of precincts that may be needed to service voters, or the number of ballots or voting machines that may be required in the administration of the voting process."

Following this as our guideline, we propose that *inactive* voters will not be included in county board mailings or considerations for changes to precinct boundaries. It should be noted that North Carolina county boards of elections do not send individual notices to registered voters regarding special elections. Polling place changes and election schedules are published in local newspapers. A notice of change in polling place is also posted at the county courthouse and sent to each of the party chairs in the county.

As stated in our Policies and Procedures manual, the list of *inactive* voters will be sent to the polling place on election day. As required by law, *inactive* voters will be allowed to vote on election day, and their record will be immediately reactivated. Precinct officials are instructed regarding the proper procedures for *inactive* voters. *Inactive* voters are not necessarily required to vote by provisional ballot.

5. *Provide the same information with regard to the consequences that flow from placement of voters on the "removed" list.*

Persons included on the list of removed voters in essence have been cancelled from the list of active registered voters; therefore, those persons would not be included in mailings from the county boards of elections, nor would they be included in determinations concerning changes to voting precincts.

### Section Two—List Maintenance Procedures

In our attempt to fully comply with the letter and the intent of the law, as it is contained in the National Voter Registration Act of 1993, we respectfully submit the following revision of our proposed List Maintenance Procedures. The replacement text is contained in Attachment C.

The purpose of the revision is to remove the act of voting from the list maintenance process. Because the NVRA stresses that nonvoting shall not be used to target or remove registrants from the list of active registered voters, it has been determined that the act of voting should play no part in the identification or removal of ineligible voters.

As explained in the replacement section contained in Attachment C, we propose a list maintenance program that will be conducted once in every four year election cycle, immediately following the Presidential election year. County Board staff will begin with the assumption that **all** registered voters will be included on the *no-contact list*, and will be mailed **no-contact** notices. County Board staff will then use county voter registration records, DMV voter registration declination lists and agency declination files to determine the registrants who have in some way verified their voter registration record during the previous four-year period. These registrants will be removed from the *no-contact list*. The *no-contact list* should include all *active* registered voters except:

- A. Registrants who, during the last four-year period, were contacted by mail, including
  1. mail and receipt of a verification notice or new voter card, and
  2. mail and receipt of any board of elections administrative mailing.

- B. Registrants who, during the last four-year period, conducted a business transaction at a DMV office, but declined a voter registration transaction during that visit, indicating that the voter information is up to date. Use the DMV voter registration declination list to determine if the address contained in the DMV record is consistent with the voter record.
- C. Registrants who, during the last four-year period, conducted a business transaction at a voter registration agency, but declined a voter registration transaction during that visit, indicating that the voter information is up to date. Use the agency declinations, retained in the board of elections office, as the agency declination list (the State Board office will not obtain a printout for public assistance agencies).
- D. Registrants who, during the last four-year period, verified the existing voter registration record by any other acceptable method. "Acceptable method" shall include, but are not limited to:
  - 1. election day change of address, precinct transfer information, provisional affirmation, etc.;
  - 2. election day address verification procedures as set in N.C.G.S. 163-150(a) (text contained in Attachment D);
  - 3. notice of candidacy; and
  - 4. request form for voter registration applications.

Using the information obtained from the above named lists and files, county boards of elections will conduct a list maintenance program every fourth year, during the year following the Presidential election year, beginning in 1997. As detailed in Attachment C, county boards of elections will identify the registrants as indicated above. Those registrants will be mailed a no-contact notice. If, and only if, a no-contact notice is returned undeliverable by the Postal Service, county boards of elections will mail a confirmation notice, and the confirmation procedures outlined in the NVRA will be followed.

The mailing of confirmation notices to those registrants whose no-contact notice was returned undeliverable will provide the registrant with an opportunity to either (1) verify the address on the existing voter record, (2) furnish a new address within the county, or (3) indicate a new address outside the county. If the registrant verifies the current information, the process will end and the voter record will remain *active*. If the registrant furnishes a new address within the county, the county board of elections will process the notice as an official change of address, send the registrant a verification notice at the new address, and retain the registrant as an *active* voter. If the registrant indicates an address that is outside the county, the county board of elections will process the signed notice as a cancellation of the registration record. Our confirmation notice does provide the voter with information regarding procedures for registering in his/her new jurisdiction.

County boards of elections will receive clear instructions for administering the list maintenance program. The State Board of Elections conducts annual training seminars, once in odd numbered years and twice in even numbered years. In depth training will take place during the August 1996 training seminar, to ensure that the list maintenance program will be conducted consistently and systematically during the 1997 year.

Thank you for the opportunity to respond to concerns regarding the North Carolina list maintenance program. The revised version of those procedures is intended to more closely comply with intent of the NVRA to remove the act of voting from list maintenance efforts. We appreciate your further consideration of our proposed procedures.

Thank you.



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Gary O. Bartlett  
Executive Secretary-Director  
State Board of Elections  
Post Office Box 2169  
Raleigh, North Carolina 27602



U.S. Department of Justice

Civil Rights Division

DLP:GS:TAT:jdp  
DJ 166-012-3  
94-3240  
95-2375

*Voting Section*  
P.O. Box 66128  
Washington, D.C. 20035-6128

February 5, 1996

Mr. Gary O. Bartlett  
Executive Secretary-Director  
North Carolina State Board of Elections  
P.O. Box 2169  
Raleigh, North Carolina 27602

Dear Mr. Bartlett:

This refers to the submission to the Attorney General pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. 1973c, of the following provisions of Chapter 762 (1994):

1. procedures for the identification and purge of persons whose voting addresses have changed to outside the county of prior registration, including procedures for sending "confirmation mailings";
2. repeal of § 163-69 of the General Statutes; and

Section VII ("List Maintenance Procedures") of the "Policies and Procedures for implementation of the National Voter Registration Act of 1993 ["NVRA"] and Article 7A, Chapter 163 of the North Carolina General Statutes." We received your response to our October 3, 1995, request for additional information, which also included a revision of the administrative list maintenance procedures, on December 5, 1995.

- 2 -

The Attorney General does not interpose any objection to the specified changes, including the administrative list maintenance procedures as amended. However, we note that Section 5 expressly provides that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the changes. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.41). In this regard, the granting of Section 5 preclearance does not preclude the Attorney General or private individuals from filing a civil action pursuant to Section 11 of the NVRA, 42 U.S.C. 1973gg-9.

Sincerely,

Deval L. Patrick  
Assistant Attorney General  
Civil Rights Division

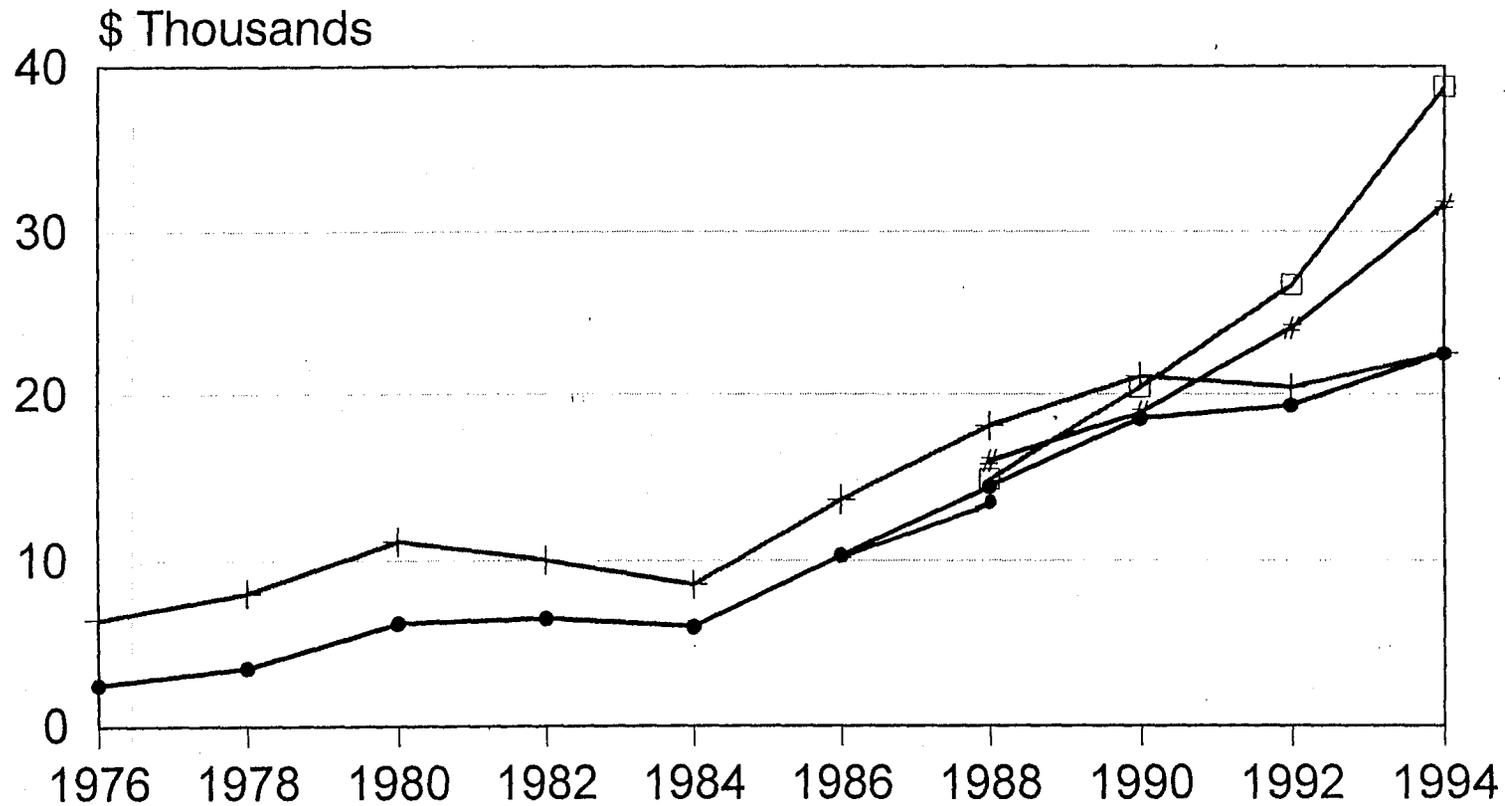
By:



Elizabeth Johnson  
Acting Chief, Voting Section



# NORTH CAROLINA HOUSE



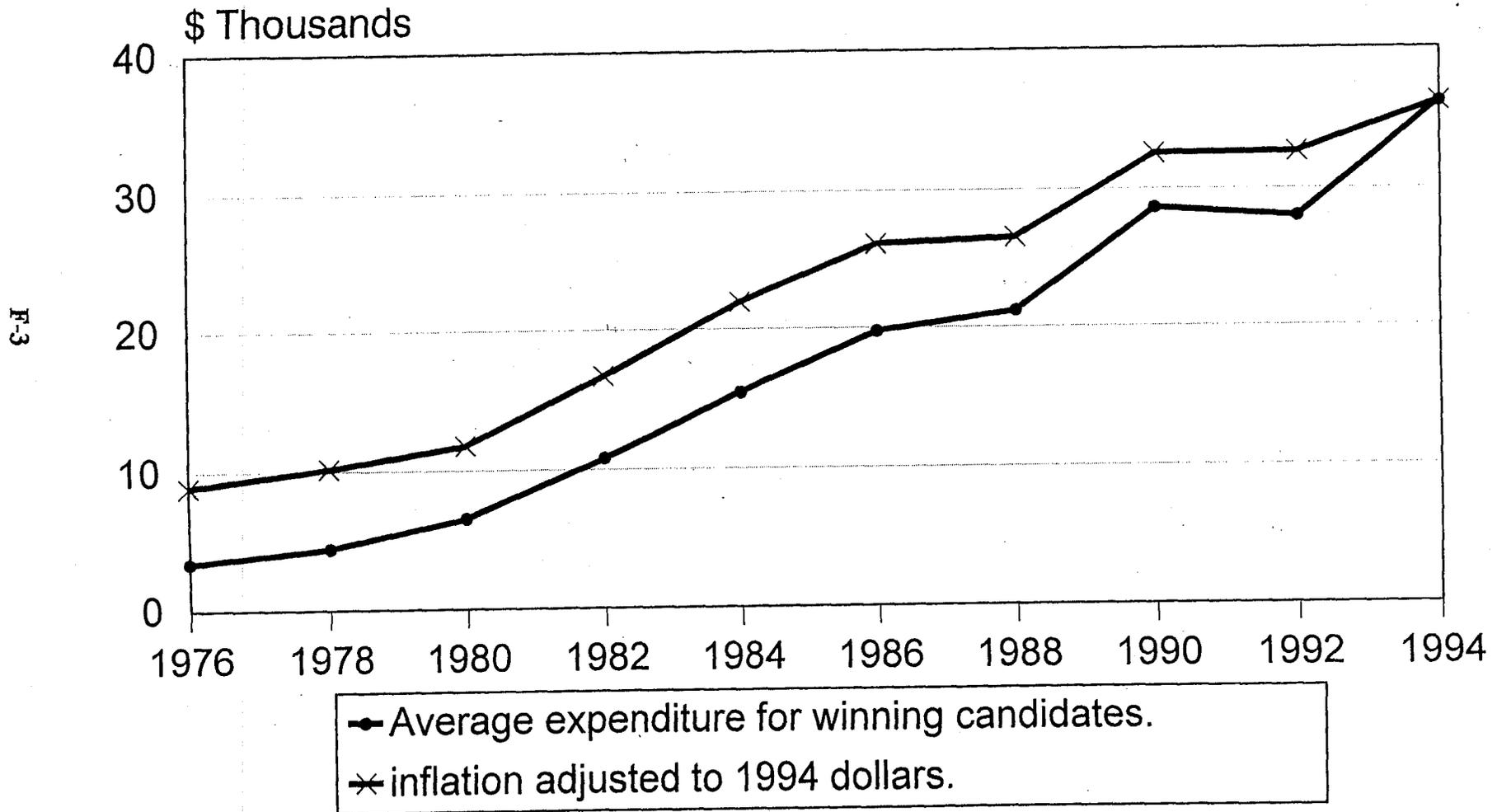
● Average expenditure for winning candidates.    ⊞ Competitive races only.  
 + Inflation-adjusted to 1994 dollars.            # Contested races only.

NORTH CAROLINA HOUSE -- WINNERS

	<u>AVERAGE SPENDING PER SEAT --</u>	<u>INFLATION ADJUSTED - 1994 \$\$</u>	<u>CONTESTED SEATS ONLY</u>	<u>COMPETITIVE SEATS ONLY</u>	
MULTI-COUNTY SEATS ONLY	1976	2,463.00	6,414.00		
	1978	3,511.00	8,016.00		
	1980	6,697.00	11,146.00		
	1982	6,485.00	10,008.00		
	1984	5,986.00	8,539.00		
	1986	10,299.00	13,623.00		
	1988	13,595.00 (multi-county seats only)			
ALL SEATS		14,403.00 (all seats)	18,049.00	15,913.00	14,806.00
	1990	18,512.00	21,419.00	18,867.00	20,422.00
	1992	19,316.00	20,419.00	24,139.00	26,770.00
	1994	22,545.00	22,545.00	31,611.00	38,787.00

Sources: Dr. Joel A. Thompson of Appalachian State University, and State Board of Elections.

# NORTH CAROLINA SENATE

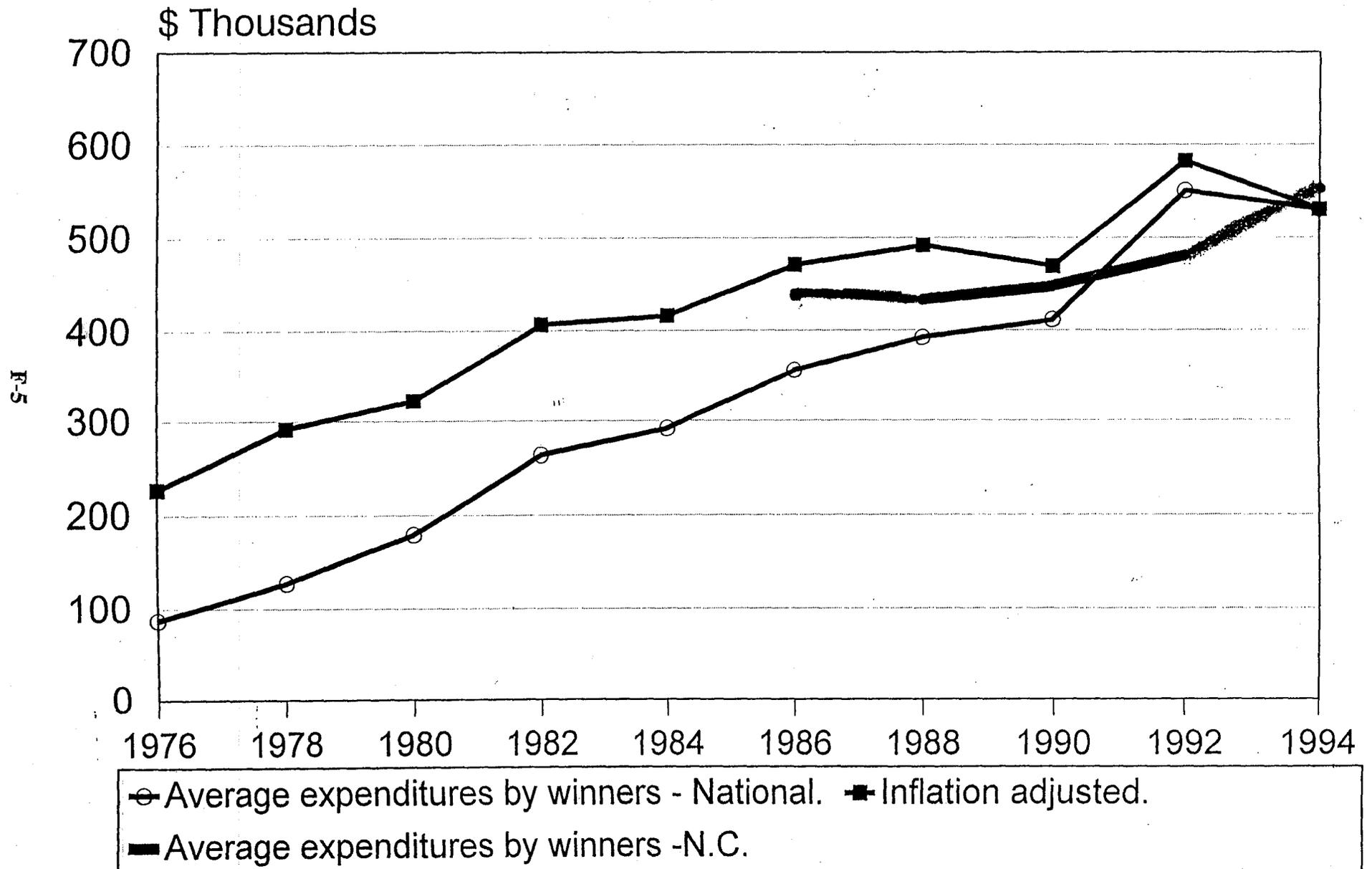


NORTH CAROLINA SENATE -- WINNERS

	<u>AVERAGE SPENDING PER SEAT --</u>	<u>INFLATION ADJUSTED - 1994 \$\$</u>	
MULTI-COUNTY SEATS ONLY	1976	3,412.00	8,885.00
	1978	4,464.00	10,192.00
	1980	6,551.00	11,782.00
	1982	10,800.00	16,667.00
	1984	15,403.00	21,973.00
	1986	19,752.00	26,127.00
	1988	21,190.00	26,554.00
ALL SEATS	1990	28,624.00	32,639.00
	1992	27,992.00	29,590.00
	1994	36,185.00	36,185.00

Sources: State Board of Elections, North Carolina Center for Public Policy Research, and The Charlotte Observer.

# UNITED STATES HOUSE



UNITED STATES HOUSE

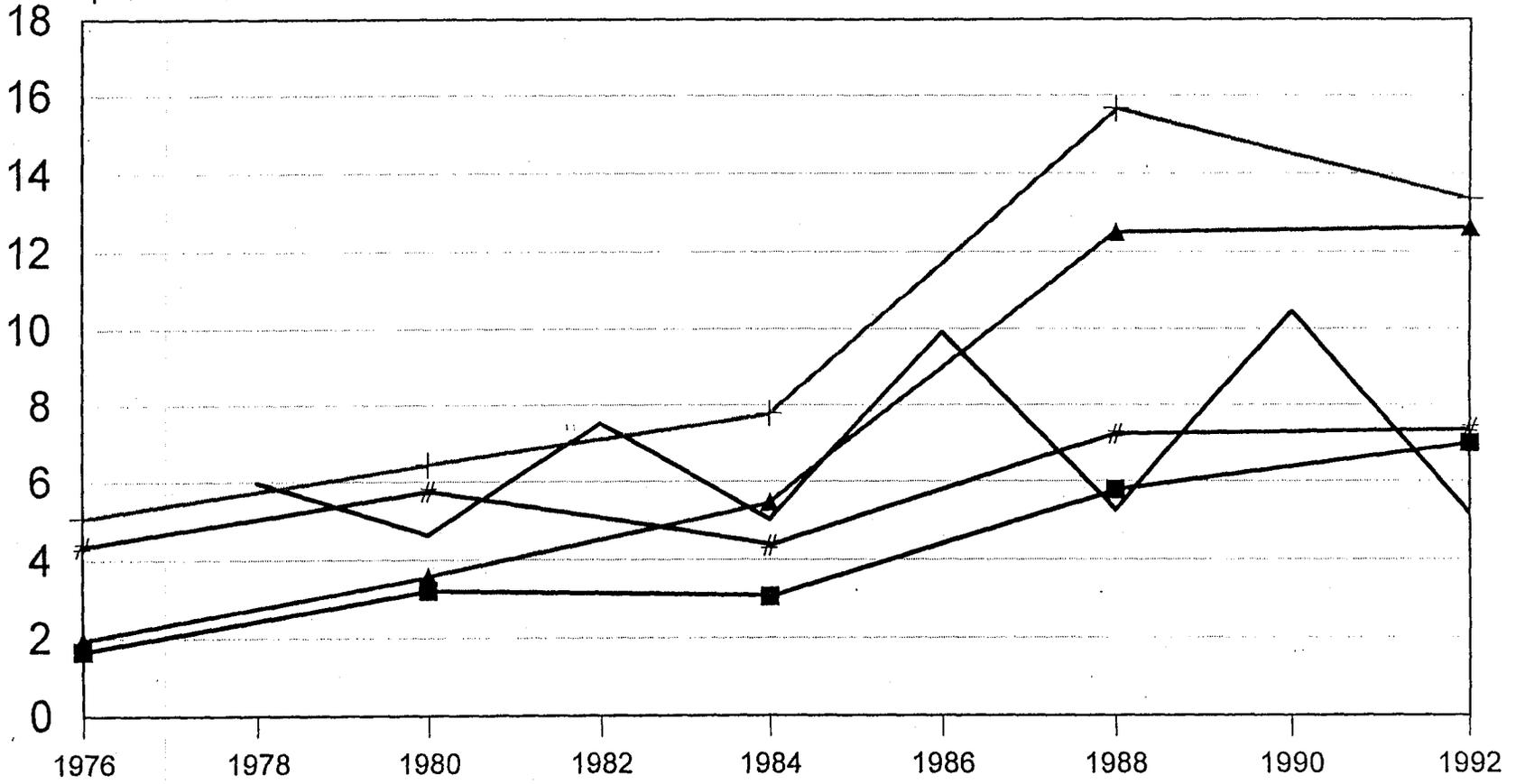
	<u>NATIONAL AVERAGE SPENDING BY WINNER ACTUAL \$\$</u>	<u>NATIONAL AVERAGE SPENDING BY WINNER 1994 \$\$</u>	<u>NORTH CAROLINA AVERAGE SPENDING BY 2 NOMINEES ACTUAL \$\$</u>
1976	87,356	227,489	
1978	127,816	291,817	
1980	179,310	322,500	
1982	263,678	406,910	
1984	291,954	416,482	
1986	356,092	471,021	443,316
1988	392,644	492,035	433,630
1990	411,724	469,468	448,330
1992	551,264	582,731	481,575
1994	530,575	530,575	550,858

Source: Federal Election Commission.

# NORTH CAROLINA GOVERNOR

\$ Thousands

E-7



- Amount spent by winning candidate in N. C.
- # Winners inflation-adjusted to 1994 dollars.
- ▲ Amount spent by both major party nominees in N.C.
- + Major party nominees inflation-adjusted to 1994 dollars.
- Average cost in states having Governor's elections - 1978-1992.

NORTH CAROLINA GOVERNOR

	<u>SPENDING BY WINNER ACTUAL \$\$</u>	<u>SPENDING BY WINNER 1994 \$\$</u>	<u>SPENDING BY 2 NOMINEES ACTUAL \$\$</u>	<u>SPENDING BY 2 NOMINEES 1994 \$\$</u>
1976	1,665,913	4,338,315	1,942,958	5,059,786
1978				
1980	3,199,316	5,751,165	3,577,429	6,434,224
1982				
1984	3,051,498	4,353,064	5,454,482	7,781,001
1986				
1988	5,770,785	7,231,560	12,508,963	15,675,392
1990				
1992	6,978,623	7,376,980	12,633,636	13,354,794

Sources: Dr. Thad Beyle, UNC-Chapel Hill, and State Board of Elections.

ANALYSIS OF CONTRIBUTIONS IN NORTH CAROLINA, BY SOURCE AND SIZE OF CONTRIBUTION

	1994 STATE LEGISLATIVE RACES, ALL CANDIDATES			1992 GOVERNOR'S RACE, JIM HUNT AND JIM GARDNER ONLY		
	Amount of Contributions	Percent of Total	Number of Contr.	Amount of Contributions	Percent of Total	Number of Contr.
All Sources Except From Candidates & Their Families*	\$7,730,000	100%		\$13,220,000	100%	
Includes for Leg. Races--						
PACs: \$2,800,000						
Polit. Comm.: \$ 420,000						
Individuals: \$4,510,000						
(Indv. over \$100: \$2,240,000)						
Amount, Percent & Number of Contributions over \$500 For Entire Election Cycle	\$2,510,000	32%	2000	\$9,300,000	70%	5100
Sources for Leg. Races--						
PACs: \$1,340,000						
Polit. Comm.: \$ 350,000						
Individuals: \$ 820,000						
Contributions over \$1,000	\$1,350,000	17%	600	\$7,200,000	54%	2700
Sources for Leg. Races--						
PACs: \$ 680,000						
Polit. Comm.: \$ 320,000						
Individuals: \$ 350,000						
Contributions over \$2,000	\$715,000	9%	180	\$5,100,000	39%	1300
Sources for Leg. Races--						
PACs: \$ 270,000						
Polit. Comm.: \$ 295,000						
Individuals: \$ 150,000						
Contributions over \$4,000	\$340,000	4%	50	\$2,150,000	16%	350
Sources for Leg. Races--						
PACs: \$ 100,000						
Polit. Comm.: \$ 200,000						
Individuals: \$ 40,000						

\* Totals do not include donations from candidates or their families which aren't subject to limitations. With these figures added, the reported contributions are \$8,310,000 for the 366 legislative candidates in 1994. At the end of 1994, candidates also reported an additional \$670,282 in unpaid loans, nearly all loans from candidates or their families. Political committees include party-affiliated, candidate or multi-candidates committees. Money from PACs, political committees or candidates played little role in Hunt-Gardner's contest. More than 95% of Hunt-Gardner's money came from individuals (1500 gave \$1,000).

CONTRIBUTION SIZE IS TOTAL GIVEN DURING THE FULL ELECTION CYCLE. '92/'94 limit = \$12,000.

Prepared by Institute for Southern Studies from reports filed at NC Board of Elections. Amounts are considered conservative since donations from the same person are sometimes reported under variations of a name or address, making totaling more difficult. 2/3/96

# North Carolina Alliance for Democracy

604 Hatch Road • Chapel Hill, NC 27516



919-967-1699 • FAX 919-968-9184  
pmacdowell@igc.apc.org

Statement by Warren Murphy, President, N.C. Alliance for Democracy  
before the Election Laws Reform Committee  
February 7, 1996

Senator Gulley, Representative Cansler, and members of the Committee,

We very much appreciate the opportunity to come before you. The N.C. Alliance for Democracy is a non-partisan, non-profit coalition of 38 organizations and hundreds of individuals from across the state who have banded together to advance the democratic process in our state. These groups include Common Cause, the League of Women Voters, the NC Council of Churches, the Institute for Southern Studies, many of the state's environmental organizations, and a broad cross section of other concerned groups.

We came together initially in support of Senator Basnight's call almost three years ago for a commission to look into campaign finance reform. Our member groups felt at the time that campaign contributions had far too large a role in determining who could afford to run for state office, who would win, and what interests would be listened to. As you have heard, the situation has only gotten worse since then. It will continue to get further and further out of control until the North Carolina General Assembly finds the political will to squarely face this issue and pass tough and truly comprehensive campaign finance reform.

First, we need to be clear that the campaign finance laws on the books in our

state are nearly worthless. Any given contributor or special interest can give virtually a unlimited amount of money to any candidate without the public knowing it before the election.

This situation has generated a vicious spiral from a government of, by, and for the people to a government of, by, and for wealthy interest groups. As each major contributor ups the ante to one candidate, his or her competitor is forced to meet the competition by finding similarly large contributors. As the stakes get higher, each candidate becomes more dependent on the big money. The influence of these big contributors grows, and the framework of the debate shifts in their favor. It is no surprise that politicians of both parties have been clamoring to cut the intangibles tax and the corporate tax, but there is much less legislative interest in cutting the food tax. The \$50 million dollar a year bank tax loophole, the multi-state sales tax loophole, and the Department of Transportation highway budget have become sacred cows while education, the environment, and our social safety net become the sacrificial lambs.

Voters notice this. It breeds discouragement, cynicism, low turn out, fewer good people willing to run, and less involvement in the process. Each election is another turn of this increasingly expensive and increasingly undemocratic spiral.

You may take exception with our characterization of the political process. There are members of this General Assembly that maintain that they have never seen contributions influence a vote. But I think none of us will disagree that with the system so dependent on campaign money, even the most trusting of voters assumes that money must play more of a role than it should. For the politicians of this state to be trusted by the

voters, they must demonstrate their willingness to build a system of campaign finance, of lobbying reporting, and of government ethics that can be trusted. Every new example of a special deal for the rich and powerful breaks that trust. The public trust of our political process is very fragile, very precious, and is, right now, very broken. This committee could begin to rebuild it.

We fully understand that many politicians feel as trapped by this system as the public does. No one here invented this system. Most of you don't like raising money; don't like some of the strings attached, and don't like the potential compromising positions and potential conflicts of interest that are sometimes involved. Each of you know that you are a sitting duck for some candidate with a lot more personal money or big donor support, slick consultants, and attack ads that you don't have the money to effectively respond to. The finest character, the best record, and the clearest vision for our state are no guarantee against an opponent with enough money. It is not fair. It is not democratic. And it is not in the public interest.

To devise a solution we must understand what we want to accomplish. We suggest three primary goals: (1) to reduce the escalating cost of election campaigns; (2) to level the playing field so that the best candidates can run and win regardless of their personal wealth or that of their backers; and (3) to restore the principle that a citizen's influence on his or her government is grounded on one person, one vote.

The many groups and individuals who comprise the Alliance do not agree on everything. We clearly do agree that we need comprehensive campaign finance reform that embodies the following 5 principles - which are spelled out on the second page of

the packet.

These are:

1. Full and timely disclosure including listing of occupation, employer, and employer's address for all significant contributions.
2. Public financing for candidates who agree to specified spending limits, candidate and candidate family contribution limits, and other fair campaign practices.
3. Contribution limits at levels which will end the undue influence of wealthy individuals and special interests.
4. Closing loopholes including effectively controlling independent expenditures, bundling, transfers among candidates and building up war chests between campaigns. As Senator Bradley recently put it, "Money in politics is like ants in the kitchen. If you don't close all the holes, they'll keep coming back."
5. Strengthened enforcement and tougher penalties for serious violations.

Let me talk for a minute about public financing. We feel that, given the Buckley v. Valeo Supreme Court decision, it is an essential part of comprehensive reform. Put simply, political campaigns require enough money to inform the electorate. That can either come from public money or private money. If it comes from private money, contributions limits must be low enough to preclude the undue influence of large donors. But contribution levels low enough to accomplish this would, in many races, require the candidate to spend far too much time and effort raising a large number of small donations.

Therefore, we feel that it is vital for some level of public funds to be provided for qualified candidates who agreed to opt in to the spending and personal contribution limit program.

The Alliance has presented to previous election law review committees two different legislative proposals which meet the 5 principles we have spelled out but which take different approaches to the public financing question. They should both be in the material provided to you by staff. If they are not, we will get you copies.

What we call the "27 point proposal" uses partial public financing to supplement limited private financing. What we call the "democratically financed elections" proposal provides total public financing for candidates who agree to accept no private contributions during the election period. These candidates must qualify for public financing under this plan by gathering a large number of \$5 contributions to demonstrate wide support. This approach takes the position that unless private contributions are banned for participating candidates, games will be played and private contributors will resort to various ways of bundling contributions.

We know public financing often meets some resistance before it is seriously considered. It's called "welfare for politicians" as if the last thing the public should spend money on is the despised pariah class of public servants. I hope we don't have to tell you how short sighted such an approach is. If the public wants their political representatives to be accountable to them and not private interests, the public needs to be the main source of the campaign money.

We would never think of having private interests finance our election process and be allowed to influence where the polling places were or who was allowed to vote. But our campaigns are equally part of the election process and just as much is at stake.

We don't organize fire departments by subscription so that those who have not made their private contribution have no protection. We have a community stake in equal fire protection because preventing fire from spreading is vital to the community. Is protecting the integrity of our government based on fair and competitive elections any less a public and community responsibility?

The Institute for Southern Studies has calculated that using the latest campaign finance figures for North Carolina we could pay for total public financing of all state legislative and statewide non-federal races for about 4 dollars per household per year - less than the cost of two gallons of milk. Put another way, that \$50 million dollar annual bank tax loophole would pay this tab at about 5 times over every year.

Our position that public financing is a critical component of comprehensive reform does not mean that other incentives for candidates to opt for spending limits are incompatible. We think designating on the ballot those who have accepted spending limits is a good idea. We are interested in Lt. Governor Wicker's proposal for free TV for those who accept spending limits and agree to refrain from certain kinds of attack ads. But we have yet to see a comprehensive reform proposal which does not need public financing which keeps contribution limits within the range that average people could afford.

So what do we ask you to do? We have now seen three election law commissions or committees. None have even begun to spend the time needed to explore a

comprehensive approach to reform. Some useful initial steps were recommended as bills and hotly debated. Yet only one very minor reform has passed.

We think the high point of the work of these commissions and committees was last January when there was finally an evening hearing on the subject which the public could attend. About 130 people attended. More than twenty spoke. And the commission got an earful.

We think this committee and this legislature needs first and foremost to hold public hearings, in Asheville, in Durham, in Charlotte, and across the state to hear from the voters what they want. The frustration is out there. The anger is out there. And the hope for democracy - even now - is still out there. We urge this committee to help be the catalyst for real reform.

Thank you.



**North Carolina General Assembly  
Legislative Services Agency**

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(919) 733-7044

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(919) 733-2578

January 17, 1996

Representative Leo Daughtry and Senator Aaron Plyler  
Co-Chairs  
Statewide/Capital/General Government Subcommittee  
Joint Legislative Commission on Governmental Operations  
North Carolina General Assembly  
Raleigh, North Carolina 27603-5925

Dear Representative Daughtry and Senator Plyler:

The 1995 General Assembly made appropriations to the State Board of Elections for both years of the biennium to develop a statewide computerized voter registration system. For the first year, beginning July 1, 1995, \$1.5 million was appropriated for the development of the statewide component of the system. For the second year, beginning July 1, 1996, \$3.5 million was appropriated for grants to counties.

The appropriations provision calls for the State Board to promulgate rules for such a system by July 1, 1996. The provision calls for the adoption by February 15, 1996 of rules by which counties could apply for and by awarded grants to comply with the statewide system. The entire \$3.5 million in grants is to be awarded by July 31, 1996.

According to the appropriations act, the State Board's authority to spend the money is contingent upon its jointly approving, with the Information Resource and Management Commission (IRMC), a detailed implementation plan and presenting that plan to the Joint Legislative Commission on Governmental Operations. Although the State Board and the IRMC have approved such a plan, they have not been placed on the agenda of Gov Ops to present it. A special panel of the subcommittee which you co-chair was appointed to investigate the matter. The four members of the special panel are yourselves, Representative Robert Grady, and Senator Clark Plexico. We are informed that that special panel has not met.

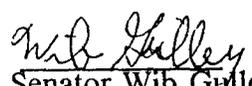
The Legislative Research Commission Study Committee on Election Law Reform, which we co-chair, voted at its meeting January 10, 1996 to send a letter to your subcommittee, respectfully requesting that the panel proceed with consideration of this important matter.



Representative Leo Daughtry/Senator Aaron Plyler  
Page 2  
January 17, 1996

Thank you very much.

Sincerely,

   
Representative Lanier Cansler Senator Wib Gulley  
Co-Chairs,  
Study Committee on Election Law Reform  
Legislative Research Commission

CC: Representative Robert Grady  
Senator Clark Plexico  
Tony Goldman  
Michele Nelson  
Evan Rodewall

MATERIAL FROM REP. JOHN WEATHERLY

North Carolina General Assembly  
HISTORY OF HOUSE BILL H 827  
LIMITED VOTING/EXTENDING TERMS  
by: WEATHERLY

Date: 10/ 4/95  
Time: 8:23 a.m.  
Page: 1  
Leg. day:H-108/S-109

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Introduced 4-11-95 by: BROWN J, CARPENTER J, CLARY, CULP,  
DICKSON, HUNT, MCMAHAN, WEATHERLY  
GS Chapters: 115C, 153A, 160A

Date	Action
4-11-95 H	REF TO COM ON JUDICII

MATERIAL FROM REP. WEATHERLY

H 827. LIMITED VOTING/EXTENDING TERMS. TO PROHIBIT THE PRACTICES OF LIMITED VOTING AND EXTENSION OF TERMS. Provides

(1) that General Assembly may not enact any law providing for election of county commissioners, city officials, or members of local boards of education by method of "limited voting" (in which voter is limited to casting fewer votes than there are seats to be filled in a multiseat contest),

(2) that no county, city, or local board of education may agree to settlement of litigation that employs limited voting, and

(3) that General Assembly shall not enact any law that extends the service of a county commissioner, elected city official, or member of a local school board beyond the term for which the official was elected (or appointed to fill a vacancy) without conditioning that extended service on the official's being elected again. Last provision does not apply to continuations in office pursuant to section 10 of art. VI of NC Constitution.

Intro. by Weatherly.

Ref. to Judiciary 2      GS 115C, 153A, 160A

MATERIAL FROM MR. LEE MORTIMER

What I'm presenting today are concepts that relate to moving us away from election methods based strictly on a "winner-take-all" model and toward elections based more on a proportional model. Proportional representation, or PR, can really be boiled down to winning votes rather than beating the opponent.

Local communities today can adopt districts, at-large or some combination for their local elections without enabling legislation. Last year, we had a bill in the Senate, number 791, sponsored by Senator Gulley. Senate Bill 791 would allow local governments to adopt three proportional voting methods—limited, cumulative, and preference voting—on their own, without having to get permission from the General Assembly.

In the Miller vs. Johnson case last year, the U.S. Supreme Court struck down Georgia's 11th Congressional district, saying that race could not be the predominate factor in drawing election boundaries. The case against North Carolina's 12th Congressional district is likely to produce a more definitive ruling when it comes down sometime this spring. And it will impact elections in our state at all levels. — *At a hearing of it in Durham - N.C.*

What limited, cumulative, and preference voting do are allow minority groups of voters to win representation without having to create single-member districts defined by race. The problem with all single-member districts, and not just the funny-shaped ones, is that one representative is chosen for all the voters. That means that up to 49 percent of voters may have voted against the person who's supposed to represent them. *Walter - reserved district*

In a proportional election, representatives are elected from multimember districts. And that gives more voters a greater chance of helping to elect someone they favor. In an election for a five-member county commission, for example,

any cohesive group of voters can group together behind a candidate and be assured of winning one of the seats.

With limited voting, you cast some number of votes fewer than the number of members to be elected. In a five-member election, that might be one, two or three votes. The reason for limiting the vote is to prevent the majority from shutting the minority out of representation.

However, there are ways of allowing more than the base number of votes. One way is to record fractions of votes, if more votes are cast than the base number. In a five-member election with one vote allowed, two votes would count as  $1/2$  of a vote per candidate; three votes would count as  $1/3$  of a vote per candidate, and so on.

Cumulative voting is most like conventional at-large voting, in that you get as many votes as there are members to be elected. But you can distribute your votes however you want—three votes for one candidate, two for another, or all five votes for the same candidate.

With preference voting, you rank the candidates in the order you prefer them, first choice, second choice, third choice, and so on. A first-choice vote is like giving your favorite candidate five votes. But if your first-choice candidate doesn't need your full vote, whatever is left over is transferred to your second-choice candidate.

All three methods have been used extensively in the U.S. Limited voting has been widely used as a voting rights remedy. It's used by nine jurisdictions in North Carolina. Cumulative voting is used in Alabama, New Mexico, South Dakota, as well as in Peroria, Illinois. From 1870 through 1980, cumulative voting was used

to elect the Illinois legislature. And cumulative voting was briefly used to elect the South Carolina legislature during Reconstruction.

Preference voting has been used by 22 U.S. cities including Cincinnati, Ohio; Kalamazoo, Michigan; Boulder, Colorado; New York City, and Cambridge, Massachusetts. It was part of the municipal reform movement earlier this century, when the goal was to curb the power of urban political bosses. But it also resulted in African-Americans being elected to local city councils decades before that became commonplace.

Preference voting has significant advantages over limited or cumulative voting: Similar candidates can compete without splitting the vote and defeating each other; no votes are "wasted" on candidates who don't need them to win or can't win; and preference voting encourages more cross-racial and coalition voting because no votes are transferred until after the higher-ranked candidate has been elected.

To get an idea of how preference voting works, let's look at the Republican presidential nominating process. This handout shows what might have happened if voters in the Iowa caucuses had been allowed to rank their choices in a preference election. The figures on the left are the actual vote percentages for each candidate and the order in which the candidates finished.

The columns to the right of the candidate names show what might have happened if voters could have voted for the candidate they liked best, knowing that they would have a chance later to vote for a "front-runner." Admittedly, it's supposition, but I believe Richard Lugar and Alan Keyes would have done much better if their supporters had not been afraid of "wasting" their vote. For the same reason, the "front-runners" would have done less well in the early stages.

A preference count begins by tallying the votes according to first-choices. The candidate with the fewest first-choice votes, Morry Taylor, would be eliminated, and his votes would be redistributed to the voters next choices. In this scenario, Taylor's 2 percent went to Lugar and Keyes. In the next round, Dornan was eliminated and his five percent went to Keyes, Gramm, and Buchanan.

In each succeeding round, the lowest candidate is eliminated, and his votes are redistributed to next-choice candidates. In the sixth round, Buchanan edges out Alexander, whose votes are then redistributed between Dole and Buchanan. In the end, because of Dole's underlying support, Dole emerges as the consensus winner by a 58% to 42% margin over Buchanan.

It's just a more rational and unifying way of choosing a winner. And because the candidates want transfer votes from their opponents supporters, there's far less incentive for negative campaigning.

Finally, you have the proposal for proportional allocation of presidential electors. In almost all states today, presidential electors are awarded on a winner-take-all basis. In 1992, George Bush got all 14 of our electoral votes even though he got only 43 percent of the popular vote. He barely edged out Bill Clinton, who got no electoral votes. Ross Perot got 14 percent of the popular vote but no electoral votes.

Bob Dole, if he's the Republican nominee, is thought to be way ahead of Clinton in North Carolina. That means neither candidate is likely to pay much attention to our state. That could change if ~~both~~ candidates had an incentive to campaign here. One way would be if the candidates knew they could earn some electoral votes, even if they don't come in first.

The real solution is to abolish the electoral college. But proportional allocation would be a way of at least circumventing its most distortive effects.

## Modified at-Large Election Methods

North Carolina communities may now adopt district, at-large or some combination for municipal and county elections. This bill adds "modified at-large" election methods to the existing menu of options that localities may adopt without having to obtain enabling legislation. Describing it as "permissive legislation," the earlier Election Laws Review Commission studied this proposal and unanimously recommended it in January 1995. This bill simply allows local communities to evaluate and decide for themselves if they want to use these methods.

### **What are they?**

Modified at-large methods are used in multimember elections. They are:

- ~~limited voting—voters may cast some number of votes fewer than the number of members to be elected.~~
- cumulative voting—voters may cast a number of votes up to the number of members to be elected; votes may be distributed in any combination, including all votes for one candidate.
- preference voting (*also known as the single-transferable vote or Hare system*)—voters rank the candidates in the order they prefer them, and candidates win by reaching a minimum threshold of top-ranked votes; votes in excess of the required minimum are transferred to the voter's next-choice candidates; candidates with the fewest top-ranked votes are eliminated, and their votes are transferred to the next-choice candidates.

### **What's the benefit?**

Modified at-large election methods give more voters a greater chance of electing someone they favor. Voters in a minority (and not just a racial minority) can concentrate their voting strength behind their preferred candidates in a multimember election. In a single-member district defined by race, some voters may feel they do not have a choice in who represents them. The U.S. Supreme Court will rule by June on whether, or how much, race can be considered in drawing elections districts. This legislation would assist local communities in responding to whatever the Supreme Court decides. More importantly, it would promote elections that treat all voters fairly.

### **Where have they been used?**

~~Limited voting is used in Anson, Beaufort, Bladen, Martin, Perquimans, and Sampson counties and in the towns of Benson, Clinton, and Jamesville. It allowed these communities to resolve voting rights disputes without having to draw racially defined districts.~~ Cumulative voting is used in Alabama, New Mexico, South Dakota—and Illinois, where it "plays in Peoria" to elect the city council. Preference voting has been used in 22 U.S. cities including Cincinnati, Ohio; Kalamazoo, Mich; New York City; Boulder, Colo; Wheeling, W. Va; and Oak Ridge, Tenn. Preference voting enabled African-Americans to be elected decades before that became commonplace.

*(Please see other side)*

## How do they work?

~~Limited voting—In electing a five-member county commission, voters could cast one or two votes. "Limiting" the vote to fewer than the number of members to be elected prevents the minority from being overwhelmed by the majority.~~

*Cumulative voting*—In that same five-member election, voters would have five votes to "spend" as they please. They might give three votes to one candidate and two to another—or they could give all five votes to the candidate they like best.

*Preference voting*—A first-choice vote is like giving a candidate five votes. But if your favorite candidate doesn't need your full vote to win—or can't win because of too few votes—your vote is transferred to your next-choice candidate.

## Advantages of preference voting

While both options have advantages over existing methods, the ability for voters to rank candidates and transfer votes makes preference voting the superior system:

*Encourages competition*—Minority candidates (or any similar candidates) can compete with each other without splitting the vote and defeating each other.

*Makes every vote count*—Transfers prevent votes from being "wasted" on candidates who don't need them to win or who can't win because of too few votes.

*Positive, unifying campaigns*—Candidates are less likely to engage in negative attacks because they may need transfer votes from their opponents' supporters. Transfers encourage coalition voting because votes are transferred only after the higher-ranked candidate has been elected or eliminated.

## What is proportional representation?

Proportional representation, or PR, refers to election methods in which parties or candidates win *representation in proportion* to their share of the total vote. "PR" is based on votes—not percentages of people in the population. Most European democracies and Nelson Mandela's South Africa use "party-list" PR. Voters cast ballots for a party's list of candidates, and seats are awarded based on a party's percentage of the vote. ~~Limited~~, cumulative and preference voting support the American tradition of voting directly for candidates. These methods have been used as much in the U.S. as anywhere else. Because they require a higher "vote threshold" to win, they are "semi-proportional" in comparison to party-list PR.

## G.S. 163-111 not applicable to modified at-large methods

G.S. 163-111 sets out requirements for primary candidates to reach a 40%-  
"substantial plurality" threshold to avoid a runoff. In a single-seat contest, support can be measured this way because the number of voters and the number of votes cast are the same. In a multi-seat contest, such a comparison is not valid because not all voters cast all the votes available to them. Moreover, a major reason for alternative voting methods is to help candidates who aren't able to obtain 40% support. Thus, G.S. 163-111 would not apply in primaries in which modified at-large election methods are used.

Lee Mortimer

# Iowa Caucus scenario using preference voting

*The ability to rank candidates and transfer votes allows the true consensus winner to emerge*

Actual %	Candidates	Preference Voting Scenario (%)							
26	(1) Dole (1)	17	17	17+3	20+4	24+4	28+10	38+20	58
23	(2) Buchanan (2)	16	16+2	18+2	20+1	21+10	31+1	32+10	42
18	(3) Alexander (3)	14	14	14+1	15+4	19+2	21+9	30	
10	(4) Forbes (6)	12	12	12+1	13				
9	(5) Gramm (7)	10	10+1	11					
7	(6) Lugar (4)	12+1	13	13+3	16+3	19+1	20		
4	(7) Keyes (5)	12+1	13+2	15+1	16+1	17			
2	(8) Dornan (8)	5	5		17				
1	(9) Taylor (9)	2							
100%									100%

**Eliminated  
Candidate**

Submitted by Lee Mortimer

## Rationalize the Electoral College—at Least in NC

Ask voters what they find most confusing about U.S. elections, and they would probably say the Electoral College. The Electoral College was set up to allow state legislatures—not the popular majority—to choose the president. The people now elect the president, but the Electoral College continues to severely distort the presidential election process. A likely result this presidential year is that North Carolina will get little attention from either major candidate.

In most states, including North Carolina, all electoral votes go to the candidate who comes in first in that state. (Nebraska and Maine decide electoral votes within Congressional districts.) The system encourages presidential candidates to concentrate on the states with the most electoral votes—where they think they can win. With 14 electoral votes, North Carolina is worth contesting—but only if there's a real contest. In 1992, the race between George Bush and Bill Clinton was close. So both candidates paid a lot of attention to North Carolina.

In a two-person race, Clinton is thought to have little chance of winning North Carolina. Bob Dole is thought to have the state "in the bag." So, neither candidate has much reason to cultivate our state's voters—unless more candidates get in the race. A simple change would assure that North Carolina voters won't be ignored. Instead of awarding all 14 electoral votes to the candidate who comes in first, electoral votes could be awarded according to a candidate's proportion of the popular vote (*one electoral vote for each 7.14% [1/14] share*)—but with a 25% minimum threshold required for a candidate to win electoral votes.

### "Winner-take-all" vs. proportional allocation of electoral votes in NC

<i>Election year</i>	<i>Presidential candidate</i>	<i>Popular vote %</i>	<i>Electoral votes won</i>	<i>or</i>	<i>Elec. votes by pro. all.</i>
1992	George Bush	43.4	14		7
	Bill Clinton	42.6	—		7
	Ross Perot	14	—		—
1996 (2 cand.)	Bob Dole	54 (est)	14		8
	Bill Clinton	46 (est)	—		6
1996 (4 cand.)	Bill Clinton	41 (est)	14		7
	Bob Dole	40 (est)	—		7
	Ross Perot	12 (est)	—		—
	Pat Buchanan	7 (est)	—		—

In addition to assuring North Carolina voters a meaningful role in the presidential election, proportional allocation offers a way to circumvent the distortive effects of the Electoral College. Since the electoral vote distribution would reflect the popular vote result, the change would render the Electoral College irrelevant—at least in North Carolina. If more states follow our example, North Carolina could start a national movement to abolish the Electoral College once and for all.

Lee Mortimer

EXCERPTS FROM:

**Ballot Access Restrictions in North Carolina**

Presentation to: The Election Law Study Commission  
Joint Committee, North Carolina General Assembly

Tuesday March 5, 1996

Candice I. Copas  
Ballot Access Coordinator  
Legal Action Chair, Libertarian Party of North Carolina  
500 N Duke Street 55-205  
Durham, NC 27701

**Statement of Request**

I would like to work with this study commission to reform the ballot access laws documented in this brief, namely, (1) the polling of ten percent in a Presidential or Gubernatorial race required to maintain ballot status as a recognized state party, (2) the loss of voter registration privileges to parties failing to meet the ten percent retention requirement, (3) a provision which would enable small parties, not recognized statewide, to run candidates in local races, appearing on the ballot with their party's affiliation label, (4) the June first petition deadline to qualify as a new party for statewide ballot placement, and (5) the state mandated wording of the petition.

North Carolina has one of the most restrictive ballot access systems in the country. The restrictions deter the organization of new parties and constrain growth mechanisms for other third parties. I would like to see this commission work actively to change the current system to make North Carolina more consistent with the other states.

In changing this system North Carolina would not just aid third party growth and development, but also save much needed tax payer funds that are currently being spent on a highly restrictive and expensive ballot access system, see a decrease in the number of unopposed races, and provide an outlet for different political voices to be heard.

## Ten Percent Retention Requirement

North Carolina has two systems for allowing a party to remain on the ballot per four year election cycle. The first system involves filing petition signatures of registered voters equal to two percent of the total votes cast in the prior election for Governor. This number is currently equal to 51,903 valid signatures to be on the ballot for the 1996 general election.

The second system gives ballot status to any party who's gubernatorial or presidential candidate polls 10% or greater in the previous general election. Five states have a ten percent retention requirement: Colorado, New Jersey, North Carolina, Oklahoma, and Virginia. Of these states, three make concessions in other places to make up for the high retention requirement, whereas NC does not. Colorado and Virginia do not decertify the party's registered voters if they fail to meet the 10% retention requirement. Virginia and New Jersey base the retention requirement on any statewide race rather than just gubernatorial election. Virginia allows the parties to accumulate the percentage over two election cycles rather than one. All of these concessions aid third party growth. North Carolina makes no concessions in any of these other areas (Appendix F contains the retention requirements for all states).

### Mechanisms by which other states aid third party growth:

- 1) Most other states require a retention rate as little as 0.5% to 5%. The state of Vermont actually grants ballot retention if the party is organized in 10 towns.
- 2) They base the retention rate on any or all statewide races rather than just President or Governor. Some states even base the requirement on the average of statewide races. If political movements are really meant to have grassroots origins, why does North Carolina base the retention requirement on the two "highest races" to win: President or Governor, and no other race is factored into the equation?
- 3) North Carolina decertifies the party's registered voters if they fail to meet the 10% requirement. Only eight states decertify registered voters for failing to meet the retention requirement, and of those six make concessions in other areas listed in this section.
- 4) Some states run the retention requirement over two or three election cycles, rather than one.
- 5) They lower the number of signatures needed to get on the ballot and have later submission deadlines, making it easier to achieve ballot placement through petitioning efforts.
- 6) They have provisions that grant ballot placement to local candidates who want to run under their party's affiliation even if their party is not ballot recognized statewide.

The State Board of Elections (SBOE) in McLaughlin v. NC State Board of Elections makes two arguments as to why the state has an interest in maintaining the current system: ballot clutter and administrative simplicity.

The SBOE argues that reducing the ballot access restrictions would cause a "cluttered ballot", meaning that several candidates would be ballot qualified and lead to "confusion" in the voting public. They claim that this will prevent frivolous candidacies. However, the latest poll done by the Committee for Party Renewal shows that, "states with ballot retention standards of ten percent or more, such as North Carolina, more than forty percent of all state legislative elections are going uncontested". At a national level, more than one third of all state legislative races are uncontested. In the 1994 general elections,

NC had 170 legislative seats that were up for election, the Republicans or Democrats failed to nominate candidates for 78 of those seats. According to official lists of primary candidates for the 1996 general elections, for those same legislative seats the Republicans or Democrats failed to nominate candidates for 54 of the seats. Nationally, in the 45 states that elected legislatures in 1988, 37% of all state legislative elections were unopposed by one of the two major parties. In 1990, 36% were unopposed races. In 1992, 33% of the same races were unopposed. And in 1994, we were back up to 36% of unopposed races (Appendix A demonstrates the number of unopposed races in 1994). This is not ballot clutter. In fact, we should be more concerned about the number of races in which candidates are running unopposed. What does the right to vote mean if there is only one candidate?

Perhaps, even more compelling, states with less restrictive ballot access laws do not have a problem with ballot clutter. California has 8 qualified state parties, Utah and New York have 7, and every other state has 5 or fewer. The highest number of parties on North Carolina's ballot was in 1980. There were six parties including the Republicans and Democrats. When looking at this data, it is hard to believe that the state could justify any interest in keeping third parties off the ballot.

As for administrative simplicity, it is easier and cheaper to everyone for North Carolina to have less restrictive ballot access restrictions. When a party petitions to get on the ballot, they must collect signatures equaling 2% of the votes cast in the last gubernatorial election. These signatures currently equal 51,903 valid signatures. To obtain 51,903 valid signatures, a party must collect 80,000 raw signatures, knowing that roughly 30% will be invalid. The individual county BOE's must certify each signature. This usually involves hiring outside help to keep up with the massive numbers of signatures and spend more funds to store the petitions which become public record.

When a party fails to poll 10% for Governor, the county BOE's must send by registered mail, notice to all registered voters of that party's affiliation that they have been changed to "unaffiliated". This also involves the cost of changing their records. Keep in mind this happens every four years as party's are kicked off the ballot. This merely perpetuates a financial burden on the party seeking ballot placement and the tax payers for support staff at the Board of Elections.

## Loss of Voter Registration Privileges

Once a party fails to achieve the ten percent retention threshold, the State Board of Elections (SBOE) inform the 100 county BOE's to change all registered party members to "unaffiliated". The individual counties send, by registered mail, a notice to each registered party member stating that their party has ceased to exist in the state, and therefore, their registrations have been changed to "unaffiliated".

It should be noted that not all states require voters to choose affiliation when registering. Of the states that do require this information, North Carolina, Oklahoma, Iowa, Maine, Nebraska, New Jersey, New York, and Wyoming are the only states that decertify registered voters if their party fails to meet the retention requirement. Of these eight states that decertify registered voters, only North Carolina, Oklahoma, and New Jersey have 10% retention requirements. Furthermore, of these three New Jersey makes up for the high retention requirement and the loss of registration privileges by basing the percentage on the average assembly of statewide candidates rather than just the gubernatorial race. The other five states that decertify registered voters have lower retention requirements (5% on average) to make up for the loss of registration privileges (Appendix F contains retention requirements in all states). The other 42 states, and Washington D.C., continue to allow registration privileges to minor parties as a mechanism for growth.

There are certain benefits that come from having registered voters of your party's affiliation. County BOE's regularly update voter information such as name, address, sex, race, age, and party affiliation. Political parties are entitled to free updates of this information (two copies in even numbered years, one in odd numbered years). This information is costly if your party is not recognized in North Carolina.

Public tax funds are set aside in the North Carolina Political Parties Financing Fund. Each taxpayer has the option to set aside \$1.00 of his or her income tax to be credited to this fund. The money is allocated on a pro rata basis given the number of registered voters affiliated with each party. Again parties failing to be recognized by the SBOE are not entitled to these funds.

Finally, the letters to the registered voters claim that said party ceases to exist in the state, thus the reason for their registration to be changed to "unaffiliated". However, the Campaign Reporting Office still requires the disband party to disclose all financial records as if it were still a fully recognized party.

### Party Affiliation for Single Candidate Races

North Carolina has no provision that permits a small party, not qualified for statewide ballot access, to nominate candidates for local offices by petition of registered voters in the local area. North Carolina General Statute §163-122 & §163-140(b) requires candidates qualifying for a local office by petition of registered voters in that local district must be listed on the ballot in the column for "Unaffiliated Candidates".

There are 19 states that do not provide provisions for small party candidates to be listed on the ballot with party affiliation for local or districtwide races. North Carolina is one of them (Appendix C shows what a party must do nominate without petitioning in all 50 states). The other states are: Arkansas, California, Delaware, Hawaii, Idaho, Kansas, Louisiana, Maryland, Michigan, Mississippi, Nevada, New Mexico, North Dakota, Ohio, Oklahoma, South Carolina, South Dakota, and Wyoming.

The 31 states, plus Washington D.C., which do have provisions for running local candidates with their party's affiliation require that the candidate collect petition signatures equalling 5% or less of the registered voters in that district, county or area.

Several states that do not provide such provisions have lawsuits pending. I bring this to your attention because the United States Fourth Circuit Court of Appeals recommended that the Libertarian Party of North Carolina in McLaughlin v. NC State Board of Elections, look deeply into this issue and consider future legal action. The last suit regarding this provision was the state of Texas and the courts recently ruled in favor of the provision. Texas now has a mechanism for local candidates to run with their party's affiliation in districtwide and even countywide races if their party does not qualify for statewide ballot placement. Many states use this as a tool for third party growth.

### Petition Deadline

North Carolina requires that the necessary 51,903 (2%) valid signatures to qualify a "new party" for ballot placement be turned in to the State Board of Elections by noon of the first day in June the year of the general election. The SBOE is required to notify the potential ballot qualified party in "a speedy manner" (typically within 30 days) whether they qualify for ballot placement in the upcoming general election held in November.

The petitions are held from the beginning of July until the November elections, leaving at least three full months in which they essentially collect dust. This is time that could be used for petitioning. North Carolina requires one of the highest signature counts of all 50 states, and has one of the earliest petition deadlines. Appendix B contains the petition requirements for all 50 states, Appendix D and E show deadlines for independents and new party (presidential) recognition statewide.

United States Federal Court of Appeals ruled in Anderson v. Celebreeze, that any deadline earlier than mid-June did not pass constitutional muster and placed an unnecessary burden on third parties and independents. North Carolina is currently in violation of this ruling by still requiring a June 1 deadline.

James Wallace, Jr., Assistant Attorney General, in his confidential memo dated April 6, 1988, informed members of the SBOE that the deadline was constitutionally suspect. He continued by suggesting that the deadline be changed to the second Thursday in July (see attached memo). The deadline has never been changed.

### Wording of the Petition

If the party chooses to collect signatures equal to two percent of the votes cast in the prior gubernatorial election to obtain ballot status, there are some difficulties that stem from the wording of the petition itself. The state mandates the following wording:

THE UNDERSIGNED REGISTERED VOTERS IN \_\_\_\_\_ COUNTY  
HEREBY PETITION FOR THE FORMATION OF A NEW POLITICAL PARTY  
TO BE NAMED \_\_\_\_\_ AND WHOSE STATE CHAIRMAN IS \_\_\_\_\_,  
RESIDING AT \_\_\_\_\_ AND CAN BE REACHED BY TELEPHONE AT  
\_\_\_\_\_. THE SIGNERS OF THIS PETITION INTEND TO ORGANIZE  
A NEW POLITICAL PARTY TO PARTICIPATE IN THE NEXT SUCCEEDING  
GENERAL ELECTION.

The last sentence of this petition deters sympathetic voters who would not necessarily vote for, but still feel as though the party deserves ballot placement, from signing the petition. They do not "intend to organize" a new party, merely show support for ballot placement. They fear they will be held accountable for the organization of the new party because that's what the petition claims.

The following petition was made by one of our volunteers while collecting signatures at a street fair one afternoon. The volunteer decided to document the number of people who refused to sign the petition due to the wording alone. The petitioner encountered six people in three hours of petitioning.

The other attachment is an article clipping from the Durham Herald Sun on October 7, 1995.

Another problem should also be noted. The petition wording "next succeeding general election" stipulates that the signatures are valid only for the next general election. Some parties such as the Libertarian Party finish their petition drives in early March of the election year. Projecting that their gubernatorial candidate may fail to poll the necessary 10% retention requirement, they plan to begin collecting another set of signatures to be turned in immediately after the election. This is to achieve ballot status for another four years and prevent the decertification of their registered voters. If the party were to go through this procedure, technically, the signatures obtained would not be valid, due to the fact that they were collected for the "next succeeding general election". Therefore, third parties have no choice but to begin petitioning efforts after they lose ballot status and have no choice but to have their registered voters changed to "unaffiliated".

Straight Ticket Voting

December 1992

The Federal Election Commission reported that only 20 states allow straight-party ticket voting at all.

A survey of those 20 states showed that the following 14 states allowed the voter to vote once for all a party's nominees from White House to courthouse:

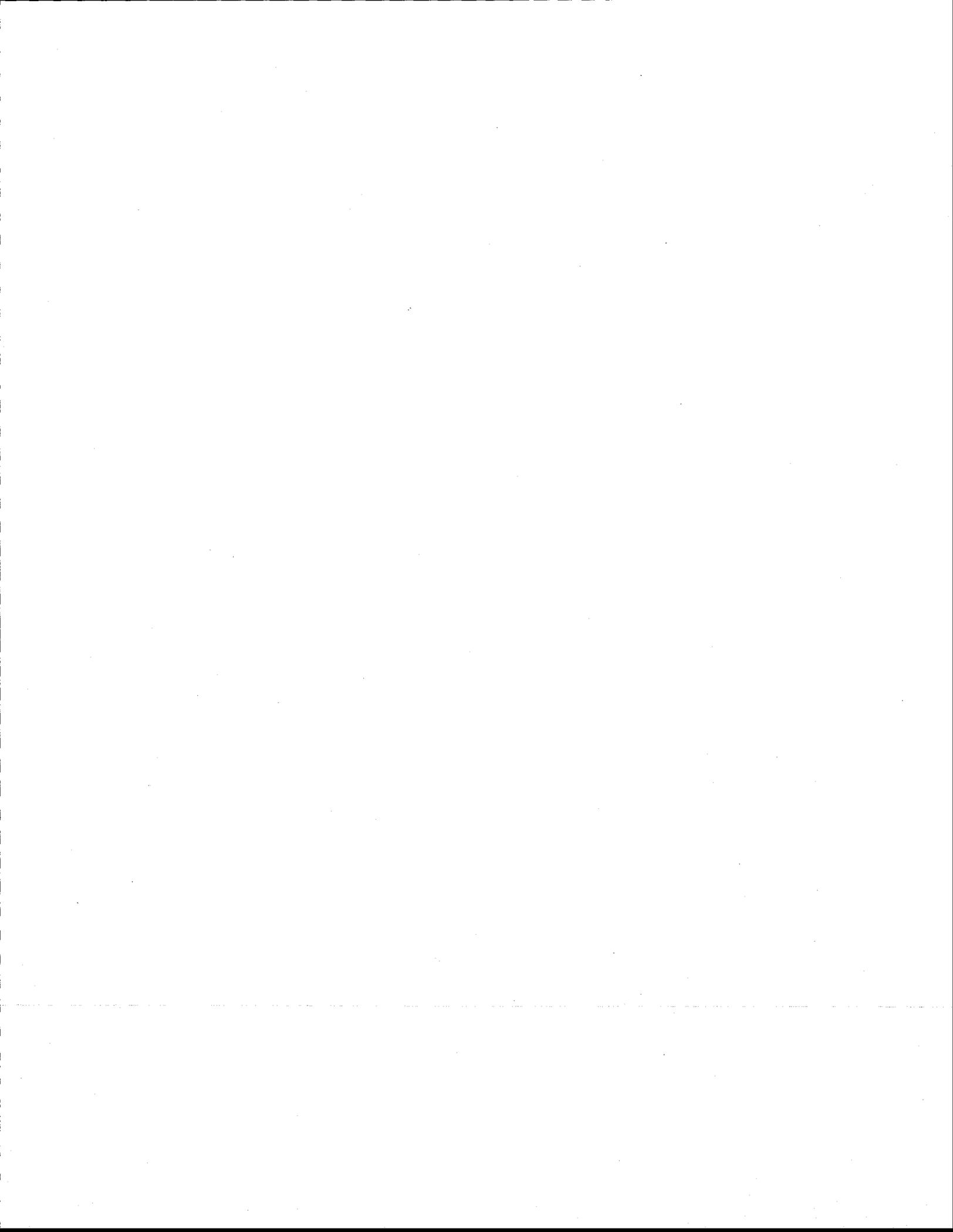
- |                   |                   |
|-------------------|-------------------|
| -- Alabama.       | -- New Mexico.    |
| -- Illinois.      | -- Pennsylvania.  |
| -- Iowa.          | -- Rhode Island.  |
| -- Kentucky.      | -- South Dakota.  |
| -- Michigan.      | -- Texas.         |
| -- Missouri.      | -- Utah.          |
| -- New Hampshire. | -- West Virginia. |

The following four states uniformly required that the presidential race be separate from the straight ticket:

- Georgia.
- North Carolina.
- Oklahoma.
- Wisconsin.

The following two states had a mixed system:

- Indiana (presidential included on mechanical systems, separate on paper ballots).
- South Carolina (presidential included on lever machines, separate on paper ballots, punchcard, and optical scan).





## State of North Carolina

Department of Justice

P. O. BOX 629

RALEIGH

27602-0629

MICHAEL F. EASLEY  
ATTORNEY GENERAL

## --MEMORANDUM--

TO: Sen. Marc Basnight  
Rep. Harold J. Brubaker  
Trip Sizmore  
Norma Ware  
Gerry F. Cohen  
William R. Gilkeson, Jr.  
Gary Bartlett

FROM: Charles Hensey  
Special Deputy Attorney General

DATE: September 14, 1995

SUBJECT: Pending litigation about rotation of candidate names on primary ballots

## The Litigation

Charles T. Sutherland, Jr., a losing candidate for nomination by the Republican Party for a seat in the General Assembly from the 12th Senatorial District in the 1994 primary, after an unsuccessful appeal to the State Board of Elections, brought suit in Federal Court challenging the practice of the State Board of Elections of allowing county boards of election that have voting systems to list names of primary candidates in alphabetical order on the face of a machine or on paper ballots to be tabulated by machines. There were four candidates running for two nominations; voting systems were used in all precincts and the vote totals tracked the order in which the names were printed on the ballot. He was third on the ballot; he received the third highest vote total.

Sutherland contends printing ballots for use by voting systems with candidate's names alphabetized contravenes North Carolina statutory law and denies candidates in voting system counties equal protection of the law under the State and Federal Constitutions because those who run in counties where paper ballots are used have their names rotated and those who run in counties that have voting systems do not have their names rotated.

## Summary of Current Law and Practice

The statutory law requires candidate names to be rotated on the ballot "if practicable" while the administrative rules of the State Board of Elections require names to be listed alphabetically on voting machines and are silent as to optical scan systems.



The current practice is to rotate names, even when only two names appear, on all paper ballots that will be counted by hand and to list candidate names in alphabetical order on the ballot face of a voting machine or ballots to be counted by optical scan methods.

#### The Statutory Law

The current election law pertaining to arrangement of names on the primary ballot requires that boards of elections responsible for printing ballots "shall have them printed so that the names of opposing candidates for any office shall, as far as practicable, occupy alternate positions upon the ballot . . . ." N.C. Gen. Stat. § 163-140(c)(8) (emphasis added).

The quoted language has been a part of the elections law since adoption of the "Australian" ballot and a general rewrite of the elections law in 1929. See Chapter 164, 1929 Session Laws. The specific language is found in Sec. 9(f) of the 1929 Act. At the time of enactment, hand counted paper ballots were used by all counties in all elections. The staff of the State Board of Elections advise that names were always rotated on paper ballots and, when paper ballots are used today, names continue to be rotated in the manner specified by the statute.

In 1949 legislation was passed authorizing the State Board of Elections to allow counties to use approved "voting systems" that are different from paper ballots. N.C. Gen. Stat. § 163-160. This law and subsequent modifications authorized the State Board of Elections to prescribe rules and regulations as to the use of voting systems but it did not repeal the rotation requirement. Among the rules authorized to be adopted are those that pertain to the form of the ballot labels used on the voting systems. N.C. Gen. Stat. § 163-160(2).

#### The Administrative Rules

The rules adopted by the State Board of Elections are codified in Chapter 4, Title 8, of the North Carolina Administrative Code. They are divided into two parts; sections 04.0101 - 04.0109 deal with voting machines and sections 04.0201 - 04.0208 deal with optical scan equipment. As to ballot layout, rule 04.0104(a) applicable to voting machines, provides that "the names of all candidates for each office for each political party shall be printed in alphabetical order under or to the right of the title of the office" (emphasis added) while Rule 04.0204(c) captioned "Titles of Office; Names of Candidates", applicable to optical scan equipment, is silent as to the order of names. Rule 04.0202(b) specifies that "the provisions of all state laws relating to elections shall apply to elections where systems and equipment covered by these rules, are used. The provisions of these rules shall, however, be controlling with respect to elections where vote recorders, tabulating devices, automatic and electronic counting equipment are used."

### The Current Practice

The staff of the State Board advises that the universal practice of the counties that use voting machines or optical scan equipment is to list the names of candidates in primary elections in alphabetical order in their system and not rotate the names. In those same counties, where paper absentee ballots are used that are counted by hand, all names are rotated even if there are only two candidates. Although no documentation can be found that explains the rationale of why names are not rotated on voting systems, they believe the reason for non-rotation was that initially, when mechanical voting machines were the only voting system, it was believed that it was impossible to have rotation on this equipment. Later reasons for non-rotation were that the costs and administrative complexity made rotation impracticable.

The current system results in full rotation in counties where paper ballots are used and voting systems are not used. It results in partial rotation in counties that have voting systems (no rotation) but use paper absentee ballots that are hand counted (full rotation).

### Comments

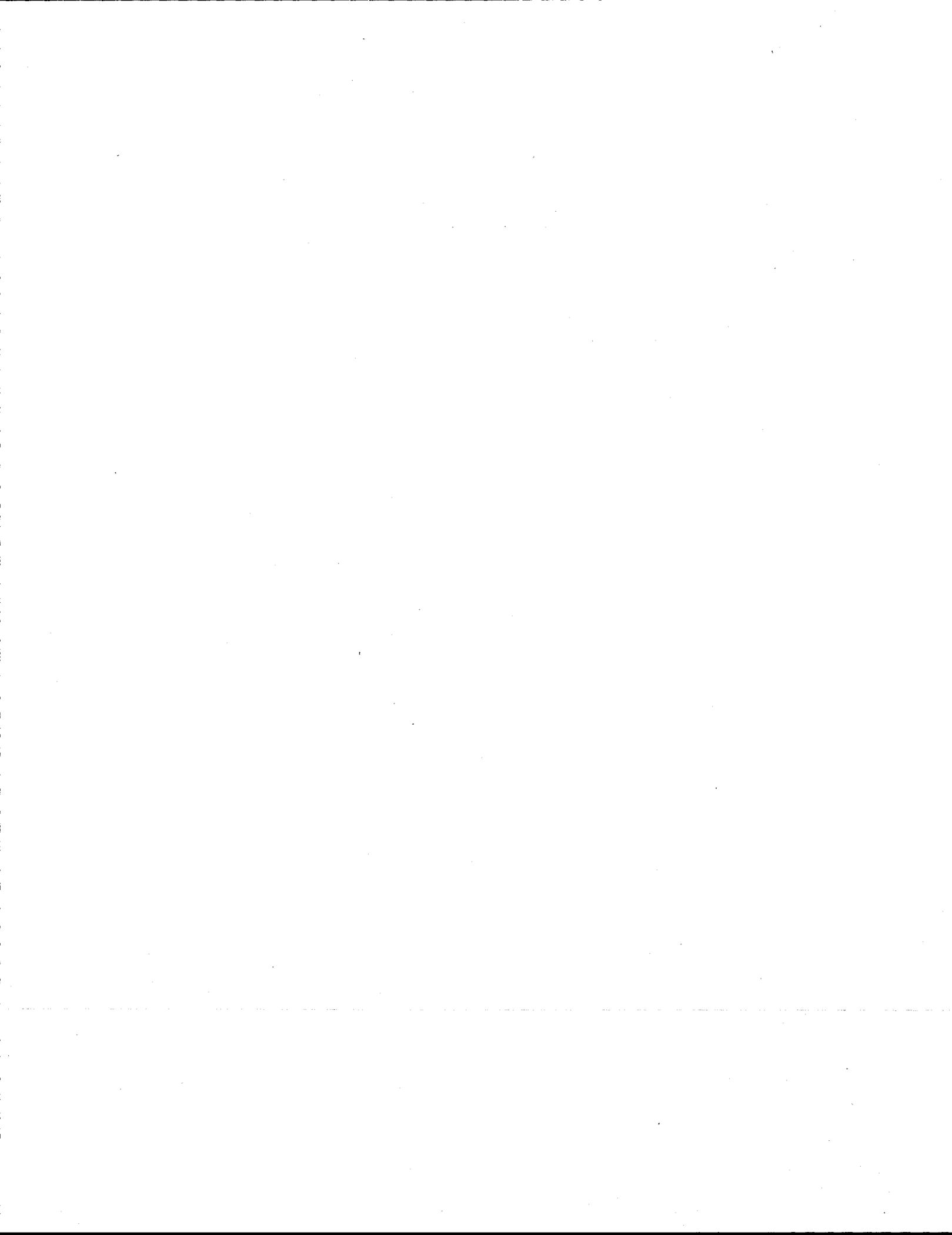
A brief review of the literature in the political science field indicates that, in low profile elections, ballot order determines results. Ballot order has no effect on high profile elections.

It is physically possible and administratively feasible to print ballots or ballot faces for voting systems that allow candidate names to be rotated in the manner contemplated by N.C. Gen. Stat. § 163-140(c)(3) and administer this at the precinct level. Rotation of names in voting systems introduce additional costs (estimated by some counties to be two to three times over existing costs) and additional administrative complexity.

Currently, 36 states do not require rotation; 13 states require rotation; one requires partial rotation and the status of one is unknown.

Mr. Sutherland has indicated some willingness to resolve his litigation on a mutually agreeable basis. The federal court has allowed the parties time to engage in negotiations.

CMH/h



## IN THE COURT OF APPEALS

521

## IN RE APPEAL OF RAMSEUR

[120 N.C. App. 521 (1995)]

IN RE APPEAL OF JAMES E. RAMSEUR AND R. GENE LENTZ FROM THE DECISION OF THE CABARRUS COUNTY BOARD OF ELECTIONS AND THE PROTEST OF THE CITY OF CONCORD MIXED BEVERAGE REFERENDUM CONDUCTED MAY 3, 1994

No. COA94-1349

(Filed 7 November 1995)

**1. Elections § 105 (NCI4th)— ten ineligible voters—refusal to disclose vote—failure to show effect on outcome—referendum not invalidated**

In an action to invalidate an election or referendum, the burden of proof is upon the unsuccessful party to show that the outcome of the election or referendum would have been different absent irregularities in the voting process. In this case, appellants were unable to meet their burden where a mixed beverage referendum passed by three votes; ten voters admitted their ineligibility but only five would disclose how they voted; and it was therefore impossible to determine whether those ten votes affected the outcome of the referendum.

Am Jur 2d, Elections §§ 342, 347, 349.

**2. Elections § 93 (NCI4th)— voting irregularities alleged—failure to consider evidence on all irregularities—error**

In failing to consider evidence with regard to other allegations of voting irregularities, including complaints regarding voting equipment and counting and recounting of votes, the State Board of Elections denied appellants the right to be heard on these issues and thus violated their right to procedural due process.

Am Jur 2d, Elections § 318.

**3. Elections § 98 (NCI4th)— County Board of Elections' decision not adopted by State Board—failure to state reasons—error**

The State Board of Elections erred in failing to state specific reasons why it did not adopt the County Board's recommended decision of a new referendum in accordance with N.C.G.S. § 150B-51(a).

Am Jur 2d, Elections §§ 318, 358.

522

## IN THE COURT OF APPEALS

## IN RE APPEAL OF RAMSEUR

[120 N.C. App. 521 (1995)]

Appeal by petitioners from an order entered 13 September 1994 by Judge George R. Greene in the Wake County Superior Court. Heard in the Court of Appeals 12 September 1995.

*Johnson, Mercer, Hearn & Vinegar, P.L.L.C., by Charles H. Mercer, Jr., Shawn D. Mercer and Cecil R. Jenkins, Jr., for petitioner appellants.*

*Attorney General Michael F. Easley, by Special Deputy Attorney General Charles M. Hensey, for the State Board of Elections, appellee.*

*Everett Gaskins Hancock & Stevens, by Hugh Stevens, Paul C. Ridgeway and C. Todd Williford, for respondent appellees.*

SMITH, Judge.

Appellants appeal a superior court order affirming a decision of the State Board of Elections which denied the Cabarrus County Board of Election's recommended decision that a new election be conducted with regard to the City of Concord Mixed Beverage Referendum.

The facts and procedural history of this case are as follows: A mixed beverage referendum was conducted in and for the City of Concord on 3 May 1994. Unofficial results showed 5,002 votes cast in favor of the sale of mixed beverages and 5,003 votes cast against the sale of mixed beverages. The Cabarrus County Board of Elections (County Board) conducted a recount on 5 May 1994, which showed 5,000 votes cast in favor of the sale of mixed beverages and 4,997 votes cast against.

As of 7 May 1994, 154 complaints had been filed regarding the referendum. The County Board held a preliminary hearing on 17 May 1994 and found probable cause as to 27 of those complaints. The complaints involved four areas of alleged election law irregularities and violations: (1) ineligible persons having voted in the referendum; (2) eligible voters having been denied the right to vote in the referendum; (3) violations or irregularities relating to voting equipment, and (4) violations or irregularities relating to the counting or recounting of ballots.

At a hearing concerning the referendum held on 13 June 1994, the County Board found that ten ineligible persons had voted in the referendum. Thus, there existed "substantial evidence to believe that

## IN RE APPEAL OF RAMSEUR

[120 N.C. App. 521 (1995)]

violations of the election law, other irregularities and/or misconduct did occur and were sufficiently serious to cast doubt upon the apparent results of the Referendum." When the ten ineligible voters were questioned as to how they voted, appellants objected. However, the County Board allowed each to confide *in camera* how they had voted. Five declined to say how they voted, three said they voted in favor of the proposition and two said they voted against it.

As to the alleged complaints that eligible voters had been denied the right to vote in the referendum, the County Board found there was not substantial evidence that any violations or irregularities had occurred, and dismissed those complaints. As to alleged complaints regarding voting equipment and counting and recounting ballots, the County Board concluded those issues were moot, in that violations or irregularities had been sufficiently shown with regard to ineligible voters to cast doubt upon the referendum results. Based upon its findings and pursuant to N.C. Admin. tit. 8, r. 2.0005(b)(2)(E) and (b)(3) (November 1984), the County Board sent its recommended decision that a new election be held to the State Board of Elections (State Board).

James E. Ramseur and R. Gene Lentz, proponents of the referendum and appellees herein, filed notice of appeal from the County Board's recommended decision to the State Board on 16 June 1994, pursuant to N.C. Admin. tit. 8, r. 2.0006(a) (November 1984). In its 22 June 1994 order, the State Board adopted the findings of the County Board, but denied the recommended decision for a new referendum. On 21 July 1994, J. Rodney Quesenberry and David S. Snyder, opponents of the referendum and appellants herein, appealed the State Board's decision to the superior court pursuant to N.C. Gen. Stat. § 150B-43 (1993). The superior court affirmed certification of the referendum results and dismissed appellants' appeal. From that decision, appellants appealed to this Court.

Appellate review of a final agency decision is governed by N.C. Gen. Stat. § 150B-51 (1993), which provides that an appellate court may

reverse or modify the agency's decision if the substantial rights of the petitioners may have been prejudiced because the agency's findings, inferences, conclusions, or decisions are:

- (1) In violation of constitutional provisions;
- (2) In excess of the statutory authority or jurisdiction of the agency;

## IN RE APPEAL OF RAMSEUR

[120 N.C. App. 521 (1995)]

- (3) Made upon unlawful procedure;
- (4) Affected by other error of law;
- (5) Unsupported by substantial evidence admissible under G.S. 150B-29(a), 150B-30, or 150B-31 in view of the entire record as submitted; or
- (6) Arbitrary or capricious.

N.C. Gen. Stat. § 150B-51(b) (1991). See *Brooks v. AnSCO & Associates*, 114 N.C. App. 711, 716, 443 S.E.2d 89, 92 (1994). The proper manner of review by this Court depends upon the particular issues presented on appeal. *Id.* (citing *Walker v. North Carolina Dep't of Human Resources*, 100 N.C. App. 498, 502, 397 S.E.2d 350, 354 (1990), *disc. review denied*, 328 N.C. 98, 402 S.E.2d 430 (1991)). If it is alleged that the agency's decision was based on an error of law, then *de novo* review is required. If, however, it is alleged that the agency's decision was not supported by the evidence or that the decision was arbitrary or capricious, then the reviewing court must apply the "whole record" test. *Id.* (citing *O.S. Steel Erectors v. Brooks, Com'r of Labor*, 84 N.C. App. 630, 634, 353 S.E.2d 869, 872 (1987)).

In their appeal to this Court, appellants allege that the State Board's decision is based upon unlawful procedure, which denies their right to procedural due process. Because appellants argue an error of law under N.C. Gen. Stat. § 150B-51(b)(3), we apply a *de novo* standard in reviewing this issue. *Brooks, Com'r of Labor v. Rebarco, Inc.*, 91 N.C. App. 459, 464, 372 S.E.2d 342, 345 (1988).

[1] The referendum results, upon recount, were 5,000 votes in favor and 4,997 votes against liquor by the drink. The County Board determined in its findings, adopted by the State Board, that ten ineligible voters cast ballots in the referendum. Appellants argue that when the number of illegal votes in a referendum or election, in this case ten votes, exceeds the vote margin, in this case three votes, a new election is required. Appellants argue that the ten illegal votes constitute irregularities sufficient to alter the result of the referendum. They contend that, if the illegal votes *could* have altered the results of the referendum, a new election is required. In support of their argument, appellants assert that in this case there is no way to ascertain what the results of the referendum would have been absent the illegal votes, because five of the ten illegal voters refused to disclose their vote. Therefore, appellants argue, because there is no way to determine what the results of the referendum would have been absent the

irregularities, a new referendum should have been ordered by the State Board.

North Carolina law on this issue is well settled. An election or referendum result will not be disturbed for irregularities absent a showing that the irregularities are sufficient to alter the result. *Gardner v. Reidsville*, 269 N.C. 581, 585, 153 S.E.2d 139, 144 (1967); *In Re Clay County General Election*, 45 N.C. App. 556, 570, 264 S.E.2d 338, 346, *disc. review denied*, 299 N.C. 736, 267 S.E.2d 672 (1980). The burden of proof is upon the unsuccessful candidate or the opponents of a referendum to show that they would have been successful had the irregularities not occurred. *In Re Election of Commissioners*, 56 N.C. App. 187, 190, 287 S.E.2d 451, 454 (1982); *In Re Appeal of Harper*, 118 N.C. App. 698, 702, 456 S.E.2d 878, 880, *disc. review denied*, 340 N.C. 567, 460 S.E.2d 317 (1995). In this case, appellants have failed to meet their burden. There were 5,000 votes cast in favor of the referendum and 4,997 votes were cast against it. Three of the illegal voters said they had voted in favor of the referendum, two said they voted against it, and five declined to divulge their vote. In order to meet their burden of proof appellants must be able to show that the referendum would have failed if the voting irregularities had not occurred. Here, four out of the five illegal voters who refused to disclose their votes would have had to testify that they voted in favor of the referendum in order for appellants to prevail.

Appellants criticize this rule because it allows illegal voters to testify after an election providing the opportunity for fraud because "the corrupt voter might well identify the opposing candidate as his pick and, if believed, the victimized candidate would be victimized again—the illegal vote would be counted twice. For this reason, some commentators have argued that no voter should be allowed to testify about his vote." *In Re Appeal of Harper*, 118 N.C. App. at 702, 456 S.E.2d at 881 (quoting Gary R. Correll, *Elections—Election Contests in North Carolina*, 55 N.C.L. Rev. 1228, 1237 (1977) (citation omitted)). We are bound by the established case law of this state which requires the unsuccessful party show that the results of an election or referendum would have been different if the irregularities of which he complains had not occurred. In order to show that the illegal votes would have changed the result of the election, appellants in the instant case must show how four of the five remaining ineligible voters voted. Here, five of the ineligible voters refused to disclose their vote and appellants did not attempt to compel those voters to testify.

At this point, there is no way to determine whether, absent the ten illegal votes, the referendum would have failed.

The North Carolina Supreme Court has stated that:

An honest elector who has observed the law enjoys the privilege, which is entirely a personal one, of refusing to disclose, even under oath as a witness, for whom he voted. . . . If an illegal voter can claim the privilege at all, it is because he finds shelter under the very different principle that he cannot be compelled to criminate himself.

*Boyer v. Teague*, 106 N.C. 576, 625, 11 S.E. 665, 679 (1890). In this case, all ten ineligible voters conceded that they voted illegally. However, appellants did not object to the five voters' failure to testify how they voted and did not attempt to compel such testimony. Thus, whether the five ineligible voters could have been compelled to reveal how they voted is not an issue before us. Appellants did not meet their burden under present law, therefore, this assignment of error is overruled.

[2] Appellants next assign as error the superior court's failure to overturn the State Board's decision on the ground that the State Board failed to consider evidence with regard to the other allegations of voting irregularities, including complaints regarding voting equipment and counting and recounting of votes. By failing to take evidence on these issues, the State Board based its decision upon improper procedure in violation of appellant's procedural due process rights. N.C. Gen. Stat. § 150B-51(b)(3). If petitioner argues that the agency's decision is in violation of a constitutional provision, *de novo* review by this Court is required. *Brooks*, 114 N.C. App. at 716, 443 S.E.2d at 92.

In its order, the State Board adopted the findings of the County Board, but failed to follow the County Board's recommended decision that a new referendum be conducted. The State Board did not request a supplement to the record, receive additional evidence, remand the matter to the County Board or hold its own hearing, with regard to the remaining complaints. In so doing, the State Board denied appellants the right to be heard on these issues and violated their right to procedural due process.

"Due process" has a dual significance, as it pertains to procedure and substantive law. As to procedure it means 'notice and an opportunity to be heard and to defend in an orderly proceed-

## IN RE APPEAL OF RAMSEUR

[120 N.C. App. 521 (1995)]

ing adapted to the nature of the case before a competent and impartial tribunal having jurisdiction of the cause.' 12 Am. Jur. 267, § 573; 16 C.J.S., Constitutional Law, § 569, p. 1156."

*State v. Smith*, 265 N.C. 173, 180, 143 S.E.2d 293, 299 (1965) (quoting *Skinner v. State*, 189 Okla. 235, 238, 115 P. 2d 123, 126, reversed on other grounds, 316 U.S. 535, 62 S. Ct. 1110, 86 L. Ed. 1655, conformed to 195 Okla. 106, 155 P. 2d 715.) In finding that irregularities with regard to the ineligible voters were sufficient to require a new election, the County Board did not hear testimony about the other irregularities and reserved comment on those issues. The County Board concluded that these issues were moot by virtue of the fact that it considered the voting of the 10 ineligible voters "sufficiently serious to cast doubt upon the result of the referendum" and recommended a new election be held. In addition the recommended decision of the County Board specifically ordered that no action be taken with regard to these complaints "pending final determination by the State Board on [the County Board's] determination and recommendation." Thus, appellants never had an opportunity to be heard with regard to these issues.

Appellees in this case argue that appellants should have appealed the County Board's failure to reach the other issues to the State Board. However, according to N.C. Admin. Code tit. 8, r. 2.0006 (a)(3) (November 1984), a county board of election decision may be appealed to the state board by a person participating in the hearing, who has been adversely affected by the county board's decision. In this case, a "decision" regarding the other irregularities had not been made by the County Board, and appellants were not "adversely affected" by the County Board's decision dealing with ineligible voters, as the Board recommended a new referendum. Appellants had no reason to appeal from the County Board's recommended decision because the result of that decision was favorable to them. When it denied a new referendum, the State Board should have either taken additional evidence, conducted its own hearing, or remanded the remaining issues to the County Board for further evidence and findings. The alleged irregularities relating to voting equipment, and counting and recounting of votes, which were not addressed by the Board, if proven, were sufficient to change the outcome of the referendum.

The State Board should have considered all alleged irregularities and their effect. This is the only manner in which a determination could be made that all alleged irregularities would or would not alter

## IN RE APPEAL OF RAMSEUR

[120 N.C. App. 521 (1995)]

the results of the referendum. Because appellants were denied a right to be heard on these issues, the State Board's decision was affected by error of law, and we must reverse and remand the case for hearings or further remand to the County Board on the remaining complaints of irregularities. The State Board may consider new evidence in accordance with the provisions of N.C. Admin. Code tit. 8, r. 2.0007 (a)(2-5) (November 1984).

[3] Appellants also assign as error the State Board's failure to state specific reasons why it did not adopt the County Board's recommended decision of a new referendum in accordance with N.C. Gen. Stat. § 150B-51(a). We note that the State Board of Elections is an independent state agency, N.C. Gen. Stat. § 163-28 (1991), and is therefore, subject to the Administrative Procedure Act, Chapter 150B. N.C. Gen. Stat. § 150B-51(a) provides in pertinent part:

If the court determines that the agency did not state specific reasons why it did not adopt a recommended decision, the court shall reverse the decision or remand the case to the agency to enter the specific reasons.

If, in the future, the State Board of Elections determines that it will not adopt the recommended decision of a County Board, it should include in its order specific reasons for such decision.

In sum, we conclude that in an action to invalidate an election or referendum, the burden of proof is upon the unsuccessful party to show that the outcome of the election or referendum would have been different absent irregularities in the voting process. We hold that in failing to reach other voting irregularity complaints made by appellants, the State Board of Elections denied appellants the right to be heard on these issues. The State Board should have taken evidence on those issues or remanded to the County Board and also should have stated specifically why it denied the County Board's recommended decision to conduct a new referendum. In failing to proceed as herein indicated, the State Board procedure encourages fragmentary appeals. Based upon the foregoing, we decline to address appellants' other assignments of error. We reverse the order of the trial court and remand for further proceedings in accordance with this opinion.

Reversed and remanded.

Judges JOHNSON and GREENE concur.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

S

D

95-LB-379A(10.11)  
(THIS IS A DRAFT AND NOT READY FOR INTRODUCTION)

Short Title: Religious Holiday Absentee Vote.

(Public)

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Sponsors: Senator Winner.

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Referred to:

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A BILL TO BE ENTITLED

1 AN ACT TO ALLOW PERSONS WHO ARE UNABLE TO GO TO THE  
2 POLLS BECAUSE OF OBSERVANCE OF A RELIGIOUS HOLIDAY TO  
3 CAST AN ABSENTEE BALLOT.  
4

5 The General Assembly of North Carolina enacts:

6 Section 1. G.S. 163-226(a) reads as rewritten:

7 "(a) Who May Vote Absentee Ballot; Generally. -- Any qualified voter of  
8 the State may vote by absentee ballot in a statewide primary, general, or  
9 special election on constitutional amendments, referenda or bond proposals,  
10 and any qualified voter of a county is authorized to vote by absentee ballot in  
11 any primary or election conducted by the county board of elections, in the  
12 manner provided in this Article if:

13 (1) ~~He~~ The voter expects to be absent from the county in which he is  
14 registered during the entire period that the polls are open on the  
15 day of the specified election in which ~~he~~ the voter desires to vote;  
16 ~~or~~

17 (2) ~~He~~ The voter is unable to be present at the voting place to vote in  
18 person on the day of the specified election in which ~~he~~ the voter  
19 desires to vote because of ~~his~~ the voter's sickness or other physical  
20 disability; ~~or~~

21 (3) ~~He~~ The voter is incarcerated, whether in ~~his~~ the voter's county of  
22 residence or elsewhere, shall be entitled to vote by absentee ballot  
23 in the county of ~~his~~ the voter's residence in any election, specified  
24 herein, in which ~~he~~ the voter otherwise would be entitled to vote.

1 Absentee voting shall be in the same manner as provided in this  
2 Article. The chief custodian or superintendent of the institution or  
3 other place of confinement shall certify that the applicant is not a  
4 felon, and the certification shall be as prescribed by the State Board  
5 of Elections. The State Board of Elections is authorized to prescribe  
6 procedures to carry out the intent and purpose of this subsection;

7 (3a) The voter because of the observance of a religious holiday pursuant  
8 to the tenets of the voter's religion will be unable to cast a ballot at  
9 the polling place on the day of the election; or

10 (4) ~~He~~ The voter is an employee of the county board of elections and his  
11 the voter's assigned duties on the day of the election will cause him  
12 the voter to be unable to be present at the voting place to vote in  
13 person and provided such employee has his the application  
14 witnessed by the chairman of the county board of elections."

15 Sec. 2. G.S. 163-227(a)(1) reads as rewritten:

16 "(1) A voter expecting to be absent from the county of his  
17 residence all day on the day of the specified ~~election.~~  
18 election, or who is otherwise entitled to cast an absentee  
19 ballot under G.S. 163-226(a)(3), 163-226(a)(3a) or 163-  
20 226(a)(4). (G.S. 163-226(a)(1))."

21 Sec. 3. G.S. 163-227(b)(1) reads as rewritten:

22 "(1) ~~Expected Absence from County on Election Day.~~ Day, or  
23 other Permitted Reason. -- A voter expected to be absent  
24 from the county in which registered during the entire period  
25 that the polls will be open on primary or general election day,  
26 or a near relative, or verifiable legal guardian, shall make  
27 written application for absentee ballots to the chairman of the  
28 board of elections of the county in which the voter is  
29 registered not earlier than 50 days nor later than 5:00 P.M.  
30 on the Tuesday before the election. The application shall be  
31 submitted in the form set out in this subdivision upon a copy  
32 which shall be furnished the voter or a near relative by the  
33 chairman of the county board of elections. The provisions of  
34 this subdivision also apply with respect to persons entitled to  
35 vote by absentee ballot under G.S. 163-226(a)(3), 163-  
36 226(a)(3a), or 163-226(a)(4).

37 The applicant shall sign his application personally, or it  
38 shall be signed by a near relative or verifiable legal guardian.  
39 The application shall be signed in the presence of a witness,  
40 who shall sign his name in the place provided on the form.  
41 The application form when properly filled out shall be  
42 transmitted by mail or delivered in person by the applicant or  
43 a near relative to the chairman or the supervisor of elections  
44 of the county board of elections.



## Summary of Legislative Proposal I

Legislative Proposal I would add to the reasons a voter may cast an absentee ballot that the voter will be unable to cast a ballot at the polling place on election day because of the observance of a religious holiday pursuant to the tenets of the voter's religion.

Currently, the only excuses for absentee voting are:

1. Expectation of being out of the county all day on election day;
2. Sickness or disability;
3. Incarceration (if the person is a non-felony convict); or
4. Being a board of elections employee whose duties will prevent voting at the polls on election day.

The proposal would go into effect in 1997.

## GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

S

D

95-RRZ-055 ( )

Short Title: Lift ESC Voter Sunset.

(Public)

Sponsors:

Referred to:

1 A BILL TO BE ENTITLED  
2 AN ACT TO REPEAL THE SUNSET ON DESIGNATION OF  
3 EMPLOYMENT SECURITY COMMISSION OFFICES AS VOTER  
4 REGISTRATION AGENCIES AND TO PROVIDE FOR FUNDING.  
5 The General Assembly of North Carolina enacts:  
6 Section 1. Section 73 of Chapter 762 of the 1993 Session Laws, as  
7 amended by Section 25.10 of Chapter 507 of the 1995 Session Laws, reads as  
8 rewritten:  
9 "Sec. 73. Sections 1 through 68 of this act become effective January 1,  
10 1995, and apply to all primaries and elections occurring on or after that date.  
11 The remainder of this act is effective upon ratification and shall apply to all  
12 primaries and elections occurring on or after the date of ratification.  
13 Prosecutions for, or sentences based on, offenses occurring before the effective  
14 date of any section of this act are not abated or affected by this act and the  
15 statutes that would be applicable to those prosecutions or sentences but for the  
16 provisions of this act remain applicable to those prosecutions or sentences.  
17 ~~G.S. 163-82.20(a)(3) and G.S. 163-82.20(b1) as enacted in Section 2 of this~~  
18 ~~act expire July 1, 1996."~~  
19 Sec. 2. G.S. 96-5(c) reads as rewritten:  
20 "(c) There is hereby created in the State treasury a special fund to be  
21 known as the Special Employment Security Administration Fund. All interest  
22 and penalties, regardless of when the same became payable, collected from  
23 employers under the provisions of this Chapter subsequent to June 30, 1947 as  
24 well as any appropriations of funds by the General Assembly, shall be paid  
25 into this fund. No part of said fund shall be expended or available for

1 expenditure in lieu of federal funds made available to the Commission for the  
2 administration of this Chapter. Said fund shall be used by the Commission for  
3 the payment of costs and charges of administration which are found by the  
4 Secretary of Labor not to be proper and valid charges payable out of any funds  
5 in the Employment Security Administration Fund received from any source and  
6 shall also be used by the Commission for: (i) extensions, repairs, enlargements  
7 and improvements to buildings, and the enhancement of the work environment  
8 in buildings used for Commission business; (ii) the acquisition of real estate,  
9 buildings and equipment required for the expeditious handling of Commission  
10 business; and (iii) the temporary stabilization of federal funds cash flow. The  
11 Employment Security Commission may use funds either from the Special  
12 Employment Security Commission Administration Fund created by this  
13 subsection or from federal funds, or from a combination of the two, to offset  
14 the costs of compliance with Article 7A of the General Statutes of North  
15 Carolina or compliance with P.L. 103-31. Refunds of interest allowable under  
16 G.S. 96-10, subsection (e) shall be made from this special fund: Provided,  
17 such interest was deposited in said fund: Provided further, that in those cases  
18 where an employer takes credit for a previous overpayment of interest on  
19 contributions due by such employer pursuant to G.S. 96-10, subsection (e),  
20 that the amount of such credit taken for such overpayment of interest shall be  
21 reimbursed to the Unemployment Insurance Fund from the Special  
22 Employment Security Administration Fund. The Special Employment Security  
23 Administration Fund, except as otherwise provided in this Chapter, shall be  
24 subject to the provisions of the Executive Budget Act (G.S. 143-1 et seq.) and  
25 the Personnel Act (G.S. 126-1 et seq.). All moneys in this fund shall be  
26 deposited, administered, and disbursed in the same manner and under the same  
27 conditions and requirements as is provided by law for other special funds in the  
28 State treasury, and shall be maintained in a separate account on the books of  
29 the State treasury. The State Treasurer shall be liable on his official bond for  
30 the faithful performance of his duties in connection with the Special  
31 Employment Security Administration Fund provided for under this Chapter.  
32 Such liability on the official bond shall be effective immediately upon the  
33 enactment of this provision, and such liability shall exist in addition to any  
34 liability upon any separate bond existent on the effective date of this provision,  
35 or which may be given in the future. All sums recovered on any surety bond  
36 for losses sustained by the Special Employment Security Administration Fund  
37 shall be deposited in said fund. The moneys in the Special Employment  
38 Security Administration Fund shall be continuously available to the  
39 Commission for expenditure in accordance with the provisions of this section."

40           Sec. 3. The Employment Security Commission shall report to the  
41 Joint Legislative Commission on Governmental Operations and to the Fiscal  
42 Research Division no later than April 1 of every year as to how the funds  
43 authorized to be used by this act were expended.

1           Sec. 4. The Employment Security Commission shall report to the  
2 Election Law Reform Committee of the Legislative Research Commission by  
3 November 1, 1996 as to how the funds authorized to be used by this act were  
4 expended, and as to improvements in procedures for voter registration, and as  
5 to voter registration statistics in Employment Security Commission offices.  
6           Sec. 5. This act becomes effective July 1, 1996.

## Summary of Legislative Proposal II

Legislative Proposal II would remove (not extend) the July 1, 1996 expiration on the designation of unemployment offices as voter registration agencies for purposes of the National Voter Registration Act. The Employment Security Commission would have the choice of funding this activity either with:

- \* Its federal funding (recently freed up for this purpose by a U.S. Department of Labor decision), or
- \* Money from the Special ESC Administration Fund fueled by penalties and interest paid by employers, or
- \* A combination of the two.

ESC would be required to report to the General Assembly on its expenditures. It would be required to report to this Committee by November 1.

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 1995

S

D

95-RRZ-053 ( )

Short Title: Friday Canvass.

(Public)

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Sponsors:

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Referred to:

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1                                   A BILL TO BE ENTITLED  
2 AN ACT TO PROVIDE FOR HOLDING THE CANVASS FOR PRIMARIES  
3 AND ELECTIONS ON THE THIRD RATHER THAN THE SECOND DAY  
4 AFTER ELECTION DAY.

5  
6 The General Assembly of North Carolina enacts:

7                   Section 1. G.S. 163-175 reads as rewritten:

8 **§ 163-175. County board of elections to canvass returns.**

9           On the ~~second~~ third day (Sunday excepted) next after every primary and  
10 election, the county board of elections shall meet at 11:00 A.M. at the county  
11 courthouse or at the office of the county board of elections (the choice of  
12 location to be at the option of the county board of elections) to canvass the  
13 votes cast in the county and prepare the county abstracts. If the returns from  
14 any precinct have not been received by the county board by 12:00 noon on  
15 that day, or if the returns of any precinct are incomplete or defective, the  
16 board shall have authority to dispatch a peace officer to the residences of the  
17 election officials of the delinquent precinct for the purpose of securing proper  
18 returns for that precinct.

19           In the presence of such persons as choose to attend, the members of the  
20 county board of elections shall open the precinct returns, canvass and judicially  
21 determine the results of the voting in the county, and prepare and sign  
22 duplicate abstracts showing:

23           (1) In a primary, the total number of votes cast in each precinct and in the  
24 county for each candidate of each political party for each office.

25           (2) In an election, the number of legal votes cast in [each] precinct for each  
26 candidate, the name of each person voted for, the political party with

1 which he is affiliated, and the total number of votes cast in the county for  
2 each person for each different office.

3 In complying with the provisions of this section, the county board of elections  
4 shall have power and authority to pass judicially upon all facts relative to the primary  
5 or election, to make or order such recounts as it deems necessary, and to determine  
6 judicially the result of the primary or election. Provided, however, that where a  
7 petitioner has been denied a recount upon a verbal or written order of the State  
8 Board of Elections pursuant to regulations of the State Board, the county board of  
9 elections shall not make or order a further recount. The board shall also have power  
10 to send for papers and persons and to examine them and to pass upon the legality of  
11 any disputed ballots transmitted to it by any precinct election official.

12 When, on account of errors in tabulating returns and filling out abstracts, the  
13 result of a primary or election in any one or more precincts cannot be accurately  
14 known, the county board of elections shall be allowed access to the ballot boxes in  
15 such precincts to make or order a recount and to declare the result."

16 Sec. 2. G.S. 163-291 reads as rewritten:

17 **§ 163-291. Partisan primaries and elections.**

18 The nomination of candidates for office in cities, towns, villages, and special  
19 districts whose elections are conducted on a partisan basis shall be governed by  
20 the provisions of this Chapter applicable to the nomination of county officers,  
21 and the terms "county board of elections," "chairman of the county board of  
22 elections," "county officers," and similar terms shall be construed with respect  
23 to municipal elections to mean the appropriate municipal officers and  
24 candidates, except that:

25 (1) The dates of primary and election shall be as provided in  
26 G.S. 163-279.

27 (2) A candidate seeking party nomination for municipal or district  
28 office shall file his notice of candidacy with the board of  
29 elections no earlier than 12:00 noon on the first Friday in July  
30 and no later than 12:00 noon on the first Friday in August  
31 preceding the election, except:

32 a. ~~In 1991 a candidate seeking party nomination for~~  
33 ~~municipal or district office in any city which elects~~  
34 ~~members of its governing board on a district basis, or~~  
35 ~~requires that candidates reside in a district in order to~~  
36 ~~run, shall file his notice of candidacy with the board of~~  
37 ~~elections no earlier than 12:00 noon on the fourth~~  
38 ~~Monday in July and no later than 12:00 noon on the~~  
39 ~~second Friday in August preceding the election; and~~

40 b. ~~In 1992 if the election is held then under G.S.~~  
41 ~~160A-23.1, a candidate seeking party nomination for~~  
42 ~~municipal or district office shall file his notice of~~  
43 ~~candidacy with the board of elections at the same time~~

1                   ~~as notices of candidacy for county officers are required~~  
2                   ~~to be filed under G.S. 163-106. election.~~

3                   No person may file a notice of candidacy for more than one  
4                   municipal office at the same election. If a person has filed a  
5                   notice of candidacy for one office with the county board of  
6                   elections under this section, then a notice of candidacy may  
7                   not later be filed for any other municipal office for that  
8                   election unless the notice of candidacy for the first office is  
9                   withdrawn first.

- 10                   (3) The filing fee for municipal and district primaries shall be  
11                   fixed by the governing board not later than the day before  
12                   candidates are permitted to begin filing notices of candidacy.  
13                   There shall be a minimum filing fee of five dollars (\$5.00).  
14                   The governing board shall have the authority to set the filing  
15                   fee at not less than five dollars (\$5.00) nor more than one  
16                   percent (1%) of the annual salary of the office sought unless  
17                   one percent (1%) of the annual salary of the office sought is  
18                   less than five dollars (\$5.00), in which case the minimum  
19                   filing fee of five dollars (\$5.00) will be charged. The fee shall  
20                   be paid to the board of elections at the time notice of  
21                   candidacy is filed.
- 22                   (4) The municipal ballot may not be combined with any other  
23                   ballot.
- 24                   (5) The canvass of the primary and second primary shall be held  
25                   on the ~~Thursday~~ third day (Sunday excepted) following the  
26                   primary or second primary.
- 27                   (6) Candidates having the right to demand a second primary shall  
28                   do so not later than 12:00 noon on the Monday following the  
29                   canvass of the first primary."

30                   Sec. 3. G.S. 163-293 reads as rewritten:

31 **§163-293. Determination of election results in cities using the election and runoff**  
32 **election method.**

33                   (a) Except as otherwise provided in this section, nonpartisan municipal elections in  
34                   cities using the election and runoff election method shall be determined by a majority  
35                   of the votes cast. A majority within the meaning of this section shall be determined  
36                   as follows:

- 37                   (1) When more than one person is seeking election to a single office, the  
38                   majority shall be ascertained by dividing the total vote cast for all  
39                   candidates by two. Any excess of the sum so ascertained shall be a  
40                   majority, and the candidate who obtains a majority shall be declared  
41                   elected.
- 42                   (2) When more persons are seeking election to two or more offices (constituting  
43                   a group) than there are offices to be filled, the majority shall be ascertained  
44                   by dividing the total vote cast for all candidates by the number of offices to

1 be filled, and by dividing the result by two. Any excess of the sum so  
2 ascertained shall be a majority, and the candidates who obtain a majority  
3 shall be declared elected. If more candidates obtain a majority than there  
4 are offices to be filled, those having the highest vote (equal to the number  
5 of offices to be filled) shall be declared elected.

6 (b) If no candidate for a single office receives a majority of the votes cast, or if an  
7 insufficient number of candidates receives a majority of the votes cast for a group of  
8 offices, a runoff election shall be held as herein provided:

9 (1) If no candidate for a single office receives a majority of the votes cast, the  
10 candidate receiving the highest number of votes shall be declared elected  
11 unless the candidate receiving the second highest number of votes requests  
12 a runoff election in accordance with subsection (c) of this section. In the  
13 runoff election only the names of the two candidates who received the  
14 highest and next highest number of votes shall be printed on the ballot.

15 (2) If candidates for two or more offices (constituting a group) are to be  
16 selected and aspirants for some or all of the positions within the group do  
17 not receive a majority of the votes, those candidates equal in number to the  
18 positions remaining to be filled and having the highest number of votes  
19 shall be declared elected unless some one or all of the candidates equal in  
20 number to the positions remaining to be filled and having the second  
21 highest number of votes shall request a runoff election in accordance with  
22 subsection (c) of this section. In the runoff election to elect candidates for  
23 the positions in the group remaining to be filled, the names of all those  
24 candidates receiving the highest number of votes and demanding a runoff  
25 election shall be printed on the ballot.

26 (c) The canvass of the first election shall be held on the ~~Thursday~~ third day  
27 (Sunday excepted) after the election. A candidate entitled to a runoff election may do  
28 so by filing a written request for a runoff election with the board of elections no later  
29 than 12:00 noon on the Monday after the result of the first election has been  
30 officially declared.

31 (d) Tie votes; how determined:

32 (1) If there is a tie for the highest number of votes in a first election, the board  
33 of elections shall conduct a recount and declare the results. If the recount  
34 shows a tie vote, a runoff election between the two shall be held unless one  
35 of the candidates, within three days after the result of the recount has been  
36 officially declared, files a written notice of withdrawal with the board of  
37 elections. Should that be done, the remaining candidate shall be declared  
38 elected.

39 (2) If one candidate receives the highest number of votes cast in a first election,  
40 but short of a majority, and there is a tie between two or more of the other  
41 candidates receiving the second highest number of votes, the board of  
42 elections shall declare the candidate having the highest number of votes to  
43 be elected, unless all but one of the tied candidates give written notice of  
44 withdrawal to the board of elections within three days after the result of the

1 first election has been officially declared. If all but one of the tied  
2 candidates withdraw within the prescribed three-day period, and the  
3 remaining candidate demands a runoff election in accordance with  
4 subsection (c) of this section, a runoff election shall be held between the  
5 candidate who received the highest vote and the remaining candidate who  
6 received the second highest vote.

7 (e) Runoff elections shall be held on the date fixed in G.S. 163- 279(a)(4). Persons  
8 whose registrations become valid between the date of the first election and the runoff  
9 election shall be entitled to vote in the runoff election, but in all other respects the  
10 runoff election shall be held under the laws, rules, and regulations provided for the  
11 first election.

12 (f) A second runoff election shall not be held. The candidates receiving the highest  
13 number of votes in a runoff election shall be elected. If in a runoff election there is a  
14 tie for the highest number of votes between two candidates, the board of elections  
15 shall determine the winner by lot."

16 Sec. 4. G.S. 163-294 reads as rewritten:

17 **§ 163-294. Determination of election results in cities using nonpartisan**  
18 **primaries.**

19 (a) In cities whose elections are nonpartisan and who use the nonpartisan  
20 primary and election method, there shall be a primary to narrow the field of  
21 candidates to two candidates for each position to be filled if, when the filing  
22 period closes, there are more than two candidates for a single office or the  
23 number of candidates for a group of offices exceeds twice the number of  
24 positions to be filled. If only one or two candidates file for a single office, no  
25 primary shall be held for that office and the candidates shall be declared  
26 nominated. If the number of candidates for a group of offices does not exceed  
27 twice the number of positions to be filled, no primary shall be held for those  
28 offices and the candidates shall be declared nominated.

29 (b) In the primary, the two candidates for a single office receiving the  
30 highest number of votes, and those candidates for a group of offices receiving  
31 the highest number of votes, equal to twice the number of positions to be  
32 filled, shall be declared nominated. In both the primary and election, a voter  
33 should not mark more names for any office than there are positions to be filled  
34 by election, as provided in G.S. 163-135(e) and G.S. 163-151(2). If two or  
35 more candidates receiving the highest number of votes each received the same  
36 number of votes, the board of elections shall determine their relative ranking  
37 by lot, and shall declare the nominees accordingly. The canvass of the primary  
38 shall be held on the ~~Thursday~~ third day (Sunday excepted) following the  
39 primary.

40 (c) In the election, the names of those candidates declared nominated  
41 without a primary and those candidates nominated in the primary shall be  
42 placed on the ballot. The candidate for a single office receiving the highest  
43 number of votes shall be elected. Those candidates for a group of offices  
44 receiving the highest number of votes, equal in number to the number of

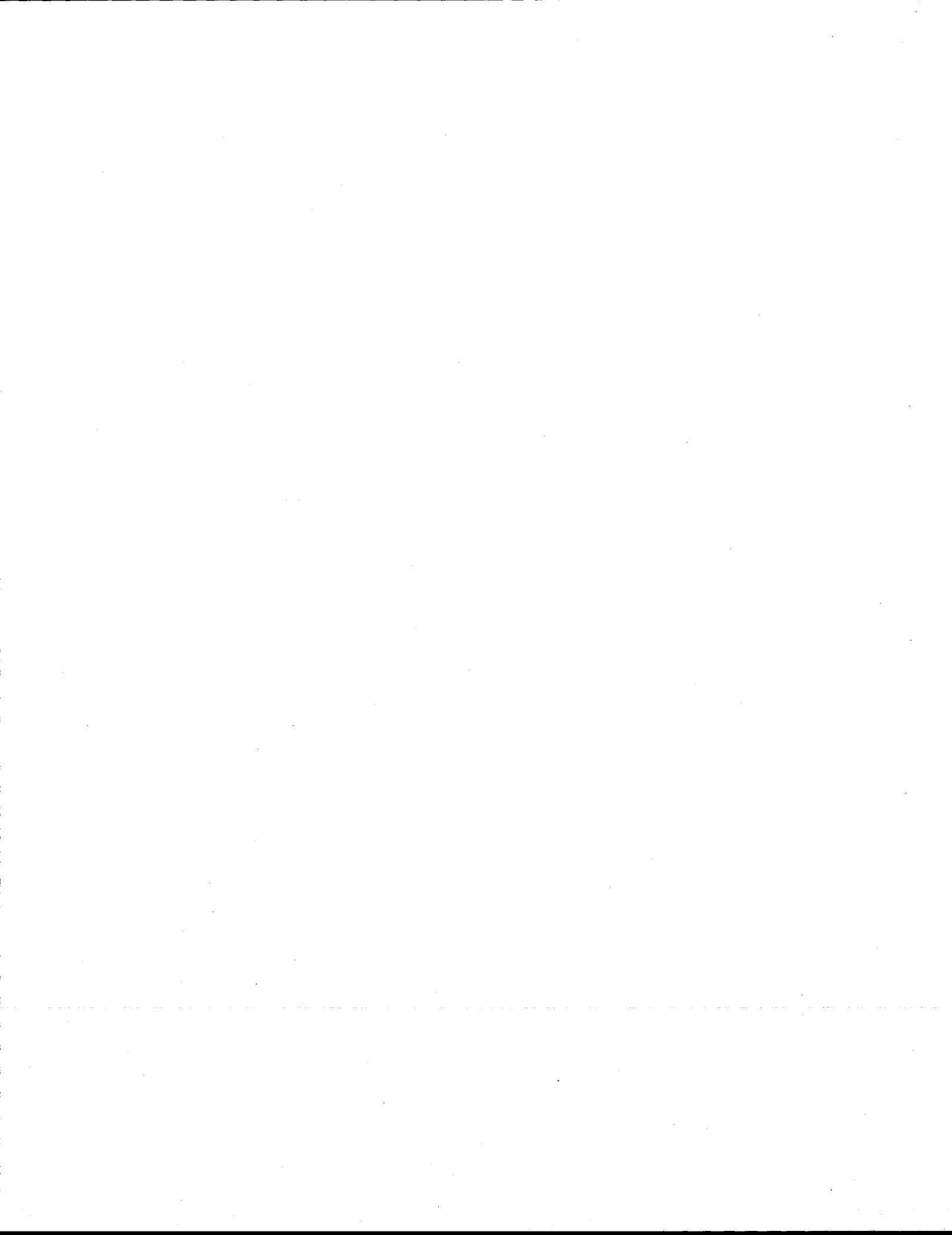
1 positions to be filled, shall be elected. If two candidates receiving the highest  
2 number of votes each received the same number of votes, the board of  
3 elections shall determine the winner by lot."

4           Sec. 5. This act is effective upon ratification.

### Summary of Legislative Proposal III

Legislative Proposal III would move the county canvass (the official collection of precinct returns for counting and preparing abstracts) from the second day after an election to the third. Sunday would not be counted. Usually this means moving the canvass from Thursday to Friday, but when an election is occasionally scheduled on Saturday, the canvass would be on Wednesday.

Effective upon ratification.



GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

S

D

95-RRZ-052 ( )

Short Title: Pollworker Split Shifts.

(Public)

Sponsors:

Referred to:

1                                   A BILL TO BE ENTITLED  
2 AN ACT TO ALLOW PRECINCT ASSISTANTS TO WORK SPLIT SHIFTS.  
3 The General Assembly of North Carolina enacts:  
4                   Section 1. G.S. 163-42 reads as rewritten:  
5    "§ 163-42.    Assistants at polls; appointment; term of office;  
6 qualifications; oath of office.  
7    Each county and municipal board of elections is authorized, in its discretion,  
8 to appoint two or more assistants for each precinct to aid the chief judge and  
9 judges. Not more than two assistants shall be appointed in precincts having  
10 500 or less registered voters. Assistants shall be qualified voters of the precinct  
11 for which appointed. When the board of elections determines that assistants are  
12 needed in a precinct an equal number shall be appointed from different  
13 political parties, unless the requirement as to party affiliation cannot be met  
14 because of an insufficient number of voters of different political parties within  
15 a precinct.  
16    In the discretion of the county board of elections, a precinct assistant may  
17 serve less than the full day prescribed for chief judges and judges in G.S. 163-  
18 47(a).  
19    The chairman of each political party in the county shall have the right to  
20 recommend from three to 10 registered voters in each precinct for appointment  
21 as precinct assistants in that precinct. If the recommendations are received by it  
22 no later than the thirtieth day prior to the primary or election, the board shall  
23 make appointments of the precinct assistants for each precinct from the names  
24 thus recommended.

1 Before entering upon the duties of the office, each assistant shall take the  
2 oath prescribed in G.S. 163-41(a) to be administered by the chief judge of the  
3 precinct for which the assistant is appointed. Assistants serve for the particular  
4 primary or election for which they are appointed, unless the county board of  
5 elections appoints them for a term to expire on the date appointments are to be  
6 made pursuant to G.S. 163-41."

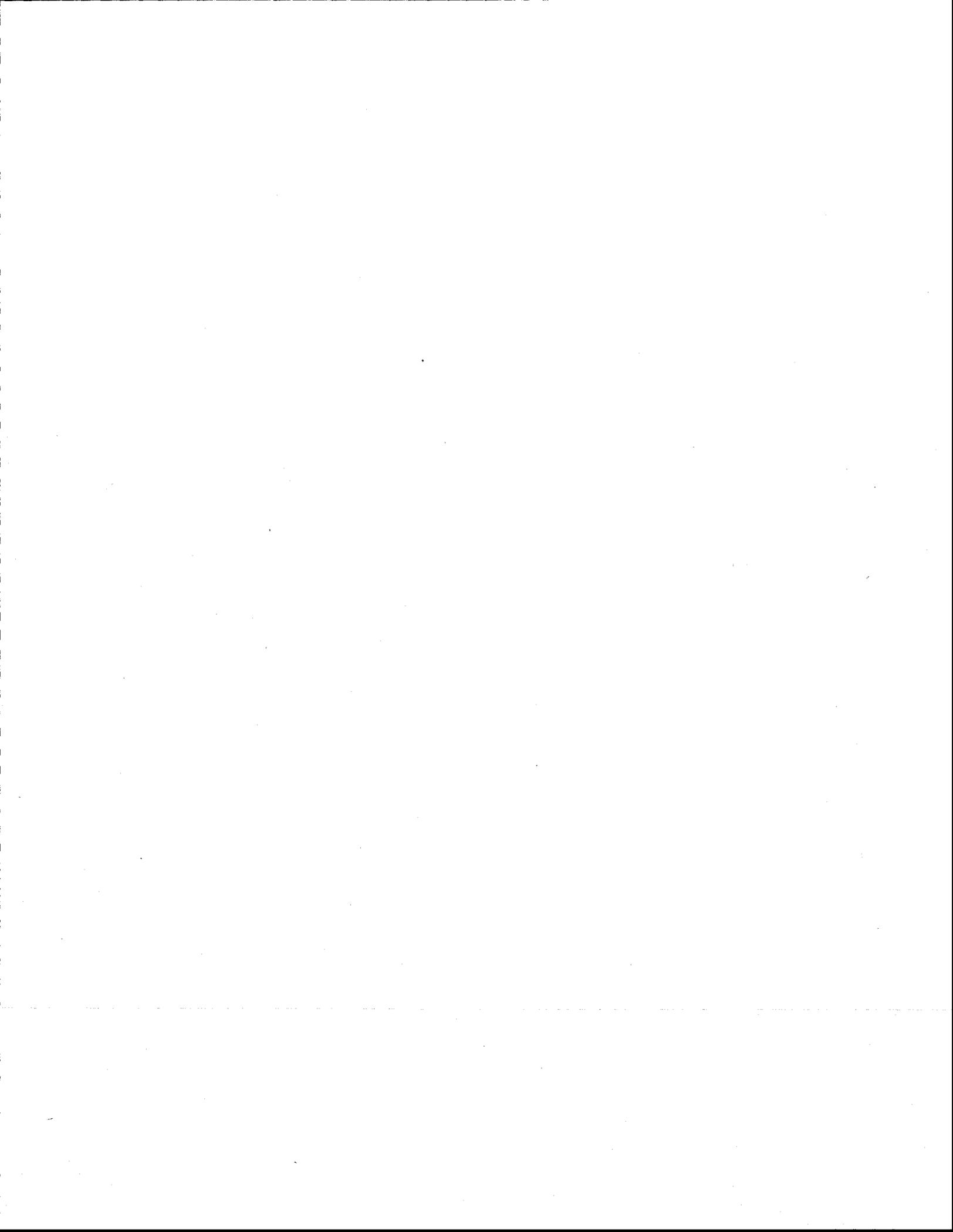
7 Sec. 2. This act is effective upon ratification.

8

## Summary of Legislative Proposal IV

Legislative Proposal IV would allow a county board of elections to permit precinct assistants to work less than the full day required of chief judges and judges.

Effective upon ratification.



GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

S

D

95-RRZ-051E ( )

Short Title: Countywide Pollworkers.

(Public)

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Sponsors:

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Referred to:

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1                                   A BILL TO BE ENTITLED  
2 AN ACT TO ALLOW THE APPOINTMENT IN CERTAIN  
3 CIRCUMSTANCES OF PRECINCT OFFICIALS AND BALLOT  
4 COUNTERS FOR A PRECINCT WHO ARE NOT REGISTERED TO  
5 VOTE IN THAT PRECINCT.  
6 The General Assembly of North Carolina enacts:  
7                   Section 1. G.S. 163-41(a) reads as rewritten:  
8 "§ 163-41. Precinct chief judges and judges of election; appointment; terms  
9 of office; qualifications; vacancies; oaths of office.  
10 (a) Appointment of Chief Judge and Judges. -- At the meeting required by  
11 G.S. 163-31 to be held on the Tuesday following the third Monday in August  
12 of the year in which they are appointed, the county board of elections shall  
13 appoint one person to act as chief judge and two other persons to act as judges  
14 of election for each precinct in the county. Their terms of office shall continue  
15 for two years from the specified date of appointment and until their successors  
16 are appointed and ~~qualified.~~ qualified, except that if a non-resident of the  
17 precinct is appointed as chief judge or judge for a precinct, that person's term  
18 of office shall end if the board of elections appoints a qualified resident of the  
19 precinct of the same party to replace the non-resident chief judge or judge. It  
20 shall be their duty to conduct the primaries and elections within their  
21 respective precincts. Persons appointed to these offices must be registered  
22 voters and residents of the ~~precinct for which appointed,~~ county in which the  
23 precinct is located, of good repute, and able to read and write. Not more than  
24 one judge in each precinct shall belong to the same political party as the chief  
25 judge.

1 The term 'precinct official' shall mean chief judges and judges appointed  
2 pursuant to this section, and all assistants appointed pursuant to G.S. 163-42,  
3 unless the context of a statute clearly indicates a more restrictive meaning.

4 No person shall be eligible to serve as a precinct official, as that term is  
5 defined above, who holds any elective office under the government of the  
6 United States, or of the State of North Carolina or any political subdivision  
7 thereof.

8 No person shall be eligible to serve as a precinct official who is a candidate  
9 for nomination or election.

10 No person shall be eligible to serve as a precinct official who holds any  
11 office in a state, congressional district, county, or precinct political party or  
12 political organization, or who is a manager or treasurer for any candidate or  
13 political party, provided however that the position of delegate to a political  
14 party convention shall not be considered an office for the purpose of this  
15 subsection.

16 The chairman of each political party in the county where possible shall  
17 recommend two registered voters in each precinct who are otherwise qualified,  
18 are residents of the precinct, have good moral character, and are able to read  
19 and write, for appointment as chief judge in the precinct, and he shall also  
20 recommend where possible the same number of similarly qualified voters for  
21 appointment as judges of election in that precinct. If such recommendations  
22 are received by the county board of elections no later than the fifth day  
23 preceding the date on which appointments are to be made, it must make  
24 precinct appointments from the names of those recommended. Provided that if  
25 only one name is submitted by the fifth day preceding the date on which  
26 appointments are to be made, by a party for judge of election by the chairman  
27 of one of the two political parties in the county having the greatest numbers of  
28 registered voters in the State, the county board of elections must appoint that  
29 person.

30 If the recommendations of the party chairs for chief judge or judge in a  
31 precinct are insufficient, the county board of elections may name to serve as  
32 chief judge or judge in that precinct registered voters in that precinct who were  
33 not recommended by the party chairs. If, after diligently seeking to fill the  
34 positions with registered voters of the precinct, the county board still has an  
35 insufficient number of officials for the precinct, the county board may appoint  
36 to the positions registered voters in other precincts in the same county who  
37 meet the qualifications other than residence to be precinct officials in the  
38 precinct. In making its appointments, the county board shall assure, wherever  
39 possible, that no precinct has a chief judge and judges all of whom are  
40 registered with the same party. In no instance shall the county board appoint  
41 non-residents of the precinct to a majority of the three positions of chief judge  
42 and judge in a precinct.

43 If, at any time other than on the day of a primary or election, a chief judge  
44 or judge of election shall be removed from office, or shall die or resign, or if

1 for any other cause there be a vacancy in a precinct election office, the  
2 chairman of the county board of elections shall appoint another in his place,  
3 promptly notifying him of his appointment. If at all possible, the chairman of  
4 the county board of elections shall consult with the county chairman of the  
5 political party of the vacating official, and if the chairman of the county  
6 political party nominates a qualified voter of that precinct to fill the vacancy,  
7 the chairman of the county board of elections shall appoint that person. In  
8 filling such a vacancy, the chairman shall appoint a person who belongs to the  
9 same political party as that to which the vacating member belonged when  
10 appointed. If the chairman of the county board of elections did not appoint a  
11 person upon recommendation of the chairman of the party to fill such a  
12 vacancy, then the term of office of the person appointed to fill the vacancy  
13 shall expire upon the conclusion of the next canvass held by the county board  
14 of elections under this Chapter, and any successor must be a person nominated  
15 by the chairman of the party of the vacating officer.

16 If any person appointed chief judge shall fail to be present at the voting  
17 place at the hour of opening the polls on primary or election day, or if a  
18 vacancy in that office shall occur on primary or election day for any reason  
19 whatever, the precinct judges of election shall appoint another to act as chief  
20 judge until such time as the chairman of the county board of elections shall  
21 appoint to fill the vacancy. If such appointment by the chairman of the county  
22 board of elections is not a person nominated by the county chairman of the  
23 political party of the vacating officer, then the term of office of the person  
24 appointed to fill the vacancy shall expire upon the conclusion of the next  
25 canvass held by the county board of elections under this Chapter. If a judge of  
26 election shall fail to be present at the voting place at the hour of opening the  
27 polls on primary or election day, or if a vacancy in that office shall occur on  
28 primary or election day for any reason whatever, the chief judge shall appoint  
29 another to act as judge until such time as the chairman of the county board of  
30 elections shall appoint to fill the vacancy. Persons appointed to fill vacancies  
31 shall, whenever possible, be chosen from the same political party as the person  
32 whose vacancy is being filled, and all such appointees shall be sworn before  
33 acting.

34 As soon as practicable, following their training as prescribed in G.S. 163-  
35 82.24, each chief judge and judge of election shall take and subscribe the  
36 following oath of office to be administered by an officer authorized to  
37 administer oaths and file it with the county board of elections:

38 'I, ....., do solemnly swear (or affirm) that I will support the Constitution  
39 of the United States; that I will be faithful and bear true allegiance to the State  
40 of North Carolina, and to the constitutional powers and authorities which are  
41 or may be established for the government thereof; that I will endeavor to  
42 support, maintain and defend the Constitution of said State not inconsistent  
43 with the Constitution of the United States; that I will administer the duties of  
44 my office as chief judge of (judge of election in) ..... precinct, ..... County,

1 without fear or favor; that I will not in any manner request or seek to persuade  
2 or induce any voter to vote for or against any particular candidate or  
3 proposition; and that I will not keep or make any memorandum of anything  
4 occurring within a voting booth, unless I am called upon to testify in a judicial  
5 proceeding for a violation of the election laws of this State; so help me, God.'

6 Notwithstanding the previous paragraph, a person appointed chief judge by  
7 the judges of election under this section, or appointed judge of election by the  
8 chief judge under this section may take the oath of office immediately upon  
9 appointment.

10 Before the opening of the polls on the morning of the primary or election,  
11 the chief judge shall administer the oath set out in the preceding paragraph to  
12 each assistant, and any judge of election not previously sworn, substituting for  
13 the words 'chief judge of' the words 'assistant in' or 'judge of election in'  
14 whichever is appropriate."

15 Sec. 2. G.S. 163-42 reads as rewritten:

16 "§ 163-42. Assistants at polls; appointment; term of office; qualifications;  
17 oath of office.

18 Each county and municipal board of elections is authorized, in its discretion,  
19 to appoint two or more assistants for each precinct to aid the chief judge and  
20 judges. Not more than two assistants shall be appointed in precincts having  
21 500 or less registered voters. Assistants shall be qualified voters of the ~~precinct~~  
22 ~~for which appointed.~~ county in which the precinct is located. When the board  
23 of elections determines that assistants are needed in a precinct an equal number  
24 shall be appointed from different political parties, unless the requirement as to  
25 party affiliation cannot be met because of an insufficient number of voters of  
26 different political parties within ~~a precinct.~~ the county.

27 The chairman of each political party in the county shall have the right to  
28 recommend from three to 10 registered voters in each precinct for appointment  
29 as precinct assistants in that precinct. If the recommendations are received by it  
30 no later than the thirtieth day prior to the primary or election, the board shall  
31 make appointments of the precinct assistants for each precinct from the names  
32 thus recommended. If the recommendations of the party chairs for precinct  
33 assistant in a precinct are insufficient, the county board of elections may name  
34 to serve as precinct assistant in that precinct registered voters in that precinct  
35 who were not recommended by the party chairs. If, after diligently seeking to  
36 fill the positions with registered voters of the precinct, the county board still  
37 has an insufficient number of precinct assistants for the precinct, the county  
38 board may appoint to the positions registered voters in other precincts in the  
39 same county who meet the qualifications other than residence to be precinct  
40 officials in the precinct. In making its appointments, the county board shall  
41 assure, wherever possible, that no precinct has precinct officials all of whom  
42 are registered with the same party. In no instance shall the county board  
43 appoint non-residents of the precinct to a majority of the positions as precinct  
44 assistant in a precinct.

1 In addition, a county board of elections may appoint any registered voter in  
2 the county as emergency election-day assistant, as long as that voter is  
3 otherwise qualified to be a precinct official. The State Board of Elections shall  
4 determine for each election the number of emergency election-day assistants  
5 each county may have, based on population, expected turnout, and complexity  
6 of election duties. The county board may assign emergency election-day  
7 assistants on the day of the election to any precinct in the county where the  
8 number of precinct officials is insufficient because of an emergency occurring  
9 within forty-eight hours of the opening of the polls that prevents an appointed  
10 precinct official from serving. A person appointed to serve as emergency  
11 election-day assistant shall be trained and paid like other precinct assistants in  
12 accordance with G.S. 163-46. A county board of elections shall apportion the  
13 appointments as emergency election-day assistant among registrants of each  
14 political party so as to make possible the staffing of each precinct with officials  
15 of more than one party, and the county board shall make assignments so that  
16 no precinct has precinct officials all of whom are registered with the same  
17 party.

18 Before entering upon the duties of the office, each assistant shall take the  
19 oath prescribed in G.S. 163-41(a) to be administered by the chief judge of the  
20 precinct for which the assistant is appointed. Assistants serve for the particular  
21 primary or election for which they are appointed, unless the county board of  
22 elections appoints them for a term to expire on the date appointments are to be  
23 made pursuant to G.S. 163-41."

24 Sec. 3. G.S. 163-43 reads as rewritten:

25 "**§ 163-43. Ballot counters; appointment; qualifications; oath of office.**

26 The county board of elections of any county may authorize the use of  
27 precinct ballot counters to aid the chief judges and judges of election in the  
28 counting of ballots in any precinct or precincts within the county. The county  
29 board of elections shall appoint the ballot counters it authorizes for each  
30 precinct or, in its discretion, the board may delegate authority to make such  
31 appointments to the precinct chief judge, specifying the number of ballot  
32 counters to be appointed for each precinct. A ballot counter must be a resident  
33 of that precinct. the county in which the precinct is located.

34 No person shall be eligible to serve as a ballot counter, who holds any  
35 elective office under the government of the United States, or of the State of  
36 North Carolina or any political subdivision thereof.

37 No person shall be eligible to serve as a ballot counter, who serves as  
38 chairman of a state, congressional district, county, or precinct political party or  
39 political organization.

40 No person who is the wife, husband, mother, father, son, daughter, brother  
41 or sister of any candidate for nomination or election may serve as ballot  
42 counter during any primary or election in which such candidate qualifies.

43 No person shall be eligible to serve as a ballot counter who is a candidate  
44 for nomination or election.

1 Upon acceptance of appointment, each ballot counter shall appear before the  
2 precinct chief judge at the voting place immediately at the close of the polls on  
3 the day of the primary or election and take the following oath to be  
4 administered by the chief judge:

5 'I, ....., do solemnly swear (or affirm) that I will support the  
6 Constitution of the United States; that I will be faithful and bear true  
7 allegiance to the State of North Carolina, and to the constitutional powers and  
8 authorities which are or may be established for the government thereof; that I  
9 will endeavor to support, maintain and defend the Constitution of said State  
10 not inconsistent with the Constitution of the United States; that I will honestly  
11 discharge the duties of ballot counter in ..... precinct, ..... County for  
12 primary (or election) held this day, and that I will fairly and honestly tabulate  
13 the votes cast in said primary (or election); so help me, God.'

14 The names and addresses of all ballot counters serving in any precinct, whether  
15 appointed by the county board of elections or by the chief judge, shall be  
16 reported by the chief judge to the county board of elections at the county  
17 canvass following the primary or election."

18 Sec. 4. G.S. 163-87 reads as rewritten:

19 "§ 163-87. Challenges allowed on day of primary or election.

20 On the day of a primary or election, at the time a registered voter offers to  
21 vote, any other registered voter of the precinct may exercise the right of  
22 challenge, and when he does so may enter the voting enclosure to make the  
23 challenge, but he shall retire therefrom as soon as the challenge is heard.

24 On the day of a primary or election, any other registered voter of the  
25 precinct may challenge a person for one or more of the following reasons:

- 26 (1) One or more of the reasons listed in G.S. 163-85(c), or  
27 (2) That the person has already voted in that primary or election,  
28 or  
29 (3) That the person presenting himself to vote is not who he  
30 represents himself to be.

31 On the day of a party primary, any voter of the precinct who is registered as  
32 a member of the political party conducting the primary may, at the time any  
33 registrant proposes to vote, challenge his right to vote upon the ground that he  
34 does not affiliate with the party conducting the primary or does not in good  
35 faith intend to support the candidates nominated in that party's primary, and it  
36 shall be the duty of the chief judge and judges of election to determine whether  
37 or not the challenged registrant has a right to vote in that primary according to  
38 the procedures prescribed in G.S. 163-88; provided that no challenge may be  
39 made on the grounds specified in the paragraph against an unaffiliated voter  
40 voting in the primary under G.S. 163-74(a1).

41 The chief judge, judge, or assistant appointed under G.S. 163-45 may enter  
42 challenges under this section against voters in the precinct for which appointed  
43 regardless of the place of residence of the chief judge, judge, or assistant.

1 If a person is challenged under this subsection, and the challenge is  
 2 sustained under G.S. 163-85(c)(3), the voter may still transfer his registration  
 3 under G.S. 163-82.15(e) if eligible under that section, and the registration  
 4 shall not be cancelled under G.S. 163-90.2(a) if the transfer is made. A person  
 5 who has transferred his registration under G.S. 163-82.15(e) may be  
 6 challenged at the precinct to which the registration is being transferred."

7 Sec. 5. G.S. 163-226(a) reads as rewritten:

8 **§163-226. Who may vote an absentee ballot.**

9 (a) Who May Vote Absentee Ballot; Generally. -- Any qualified voter of the  
 10 State may vote by absentee ballot in a statewide primary, general, or special  
 11 election on constitutional amendments, referenda or bond proposals, and any  
 12 qualified voter of a county is authorized to vote by absentee ballot in any  
 13 primary or election conducted by the county board of elections, in the manner  
 14 provided in this Article if:

- 15 (1) ~~He~~ The voter expects to be absent from the county in which  
 16 he is registered during the entire period that the polls are  
 17 open on the day of the specified election in which he desires  
 18 to vote; or
- 19 (2) ~~He~~ The voter is unable to be present at the voting place to  
 20 vote in person on the day of the specified election in which he  
 21 desires to vote because of his sickness or other physical  
 22 disability; or
- 23 (3) ~~He~~ The voter is incarcerated, whether in his county of  
 24 residence or elsewhere, shall be entitled to vote by absentee  
 25 ballot in the county of his residence in any election, specified  
 26 herein, in which he otherwise would be entitled to vote.  
 27 Absentee voting shall be in the same manner as provided in  
 28 this Article. The chief custodian or superintendent of the  
 29 institution or other place of confinement shall certify that the  
 30 applicant is not a felon, and the certification shall be as  
 31 prescribed by the State Board of Elections. The State Board  
 32 of Elections is authorized to prescribe procedures to carry out  
 33 the intent and purpose of this subsection;
- 34 (4) ~~He~~ The voter is an employee of the county board of elections  
 35 or a precinct official or ballot counter, in another precinct and  
 36 ~~his~~ the voter's assigned duties on the day of the election will  
 37 cause ~~him~~ the voter to be unable to be present at the voting  
 38 place to vote in person and provided such employee has ~~his~~  
 39 the application witnessed by the chairman of the county board  
 40 of elections."

41 Sec. 6. This act is effective upon ratification.

## Summary of Legislative Proposal V

Legislative Proposal V would provide that, if county boards of elections cannot find registered voters who live in a precinct to serve as precinct officials in that precinct, they can appoint voters who live in another precinct in the same county. This would affect the chief judge, the two judges of election, the precinct assistants, and the ballot counters. The county board could not, however, appoint outsiders to a majority of a precinct's three-judge panel, or a majority of a precinct's assistants.

The proposal would also provide for county boards of elections to replace outside-the-precinct officials with insider during the two year term of an official if the insider could be found.

The proposal provides that the party chairs would, as now, nominate voters by the precincts. If they were insufficient to fill all the positions in a precinct, the county board would then have to seek other voters in the precinct to fill the positions. If it still could not find voters in that precinct to fill the position, the board could then appoint a voter from another precinct in the county. The board, as now, would be required to assure if possible that more than one party was represented among the officials in a precinct.

The proposal would also allow a chief judge, judge, or assistant for a precinct to challenge a voter on election day in the precinct regardless of whether that official lives in the precinct. This is done on the theory that challenging a voter is an essential, though apparently infrequently used, function of those offices. Currently, only registered voters in a precinct may be appointed to any of those positions, and only a registered voter in a precinct may enter an election-day challenge against a voter in a precinct.

In addition, the county board could appoint a staff of emergency election-day assistants to fill gaps that occur at polling places around the county within 48 hours of election day. Those appointments could come from anywhere in the county, but the group would have to be bipartisan enough to provide bipartisan coverage in any precinct. The emergency election-day assistants would be trained and paid like other assistants, even if they were never assigned to a precinct. The State Board of Elections would set a limit for each county each election on the number of emergency election-day assistants who could be appointed.

Effective upon ratification.



1 exercising the powers and duties of this subdivision, the board  
2 may act only when a majority of its members are present at  
3 any meeting at which such powers or duties are exercised.

4 (3) To investigate irregularities, nonperformance of duties, and  
5 violations of laws by election officers and other persons, and  
6 to report violations to the State Board of Elections. In  
7 exercising the powers and duties of this subdivision, the board  
8 may act only when a majority of its members are present at  
9 any meeting at which such powers or duties are exercised.  
10 Provided that in any hearing on an irregularity no board of  
11 elections shall consider as evidence the testimony of a voter  
12 who cast a ballot that voter was not eligible to cast as to how  
13 that voter voted on that ballot.

14 (4) As provided in G.S. 163-128, to establish, define, provide,  
15 rearrange, discontinue, and combine election precincts as it  
16 may deem expedient, and to fix and provide for places of  
17 registration and for holding primaries and elections.

18 (5) To review, examine, and certify the sufficiency and validity of  
19 petitions and nomination papers.

20 (6) To advertise and contract for the printing of ballots and other  
21 supplies used in registration and elections; and to provide for  
22 the delivery of ballots, pollbooks, and other required papers  
23 and materials to the voting places.

24 (7) To provide for the purchase, preservation, and maintenance of  
25 voting booths, ballot boxes, registration and pollbooks, maps,  
26 flags, cards of instruction, and other forms, papers, and  
27 equipment used in registration, nominations, and elections;  
28 and to cause the voting places to be suitably provided with  
29 voting booths and other supplies required by law.

30 (8) To provide for the issuance of all notices, advertisements, and  
31 publications concerning elections required by law. In  
32 addition, the county board of elections shall give notice at  
33 least 20 days prior to the date on which the registration books  
34 or records are closed that there will be a primary, general or  
35 special election, the date on which it will be held, and the  
36 hours the voting places will be open for voting in that  
37 election. The notice also shall describe the nature and type of  
38 election, and the issues, if any, to be submitted to the voters  
39 at that election. Notice shall be given by advertisement at  
40 least once weekly during the 20-day period in a newspaper  
41 having general circulation in the county and by posting a  
42 copy of the notice at the courthouse door. Notice may  
43 additionally be made on a radio or television station or both,  
44 but such notice shall be in addition to the newspaper and

- 1 other required notice. This subdivision shall not apply in the  
2 case of bond elections called under the provisions of Chapter  
3 159.
- 4 (9) To receive the returns of primaries and elections, canvass the  
5 returns, make abstracts thereof, transmit such abstracts to the  
6 proper authorities, and to issue certificates of election to  
7 county officers and members of the General Assembly except  
8 those elected in districts composed of more than one county.
- 9 (10) To appoint and remove the board's clerk, assistant clerks, and  
10 other employees; and to appoint and remove precinct transfer  
11 assistants as provided in G.S. 163-72.3.
- 12 (11) To prepare and submit to the proper appropriating officers a  
13 budget estimating the cost of elections for the ensuing fiscal  
14 year.
- 15 (12) To perform such other duties as may be prescribed by this  
16 Chapter or the rules of the State Board of Elections.
- 17 (13) Notwithstanding the provisions of any other section of this  
18 Chapter, to have access to any ballot boxes and their  
19 contents, any voting machines and their contents, any  
20 registration records, pollbooks, voter authorization cards or  
21 voter lists, any lists of absentee voters, any lists of  
22 presidential registrants under the Voting Rights Act of 1965  
23 as amended, and any other voting equipment or similar  
24 records, books or lists in any precinct or municipality over  
25 whose elections it has jurisdiction or for whose elections it has  
26 responsibility."

27 Sec. 2. G.S. 163-22.1 reads as rewritten:

28 "**§ 163-22.1. Power of State Board to order new elections.**

29 (a) State Board's Authority. -- If the State Board of Elections, acting upon  
30 the agreement of at least four of its members, and after holding public hearings  
31 on election contests, alleged election irregularities or fraud, or violations of  
32 elections laws, determines that a new primary, general or special election  
33 should be held, the Board may order that a new primary, general or special  
34 election be held, either statewide, or in any counties, electoral districts,  
35 special districts, or municipalities over whose elections it has jurisdiction. The  
36 State Board shall be authorized to order a new election without conducting a  
37 public hearing provided a public hearing on the allegations was held by the  
38 county or municipal board of elections and the State Board is satisfied that  
39 such hearing gave sufficient opportunity for presentation of evidence and  
40 provided further that the State Board adopts the findings of the county or  
41 municipal board of elections.

42 Any new primary, general or special election so ordered shall be conducted  
43 under applicable constitutional and statutory authority and shall be supervised

1 by the State Board of Elections and conducted by the appropriate elections  
2 officials.

3 The State Board of Elections has authority to adopt rules and regulations  
4 and to issue orders to carry out its authority under this section.

5 (b) Special Circumstances in Which New Election Shall be Called. --  
6 Notwithstanding the provisions of subsection (a) of this section, if

7 (1) The number of ineligible voters who voted in the election was  
8 sufficient to change the result of the election; and

9 (2) The way those votes were cast cannot be determined by  
10 examining the ballots,

11 then the person protesting the election shall have the right to a new election,  
12 unless the State Board determines by means other than the testimony of the  
13 ineligible voters as to how they voted, that the subtraction of their votes would  
14 not change the outcome of the election.

15 (c) Special Circumstances in Which Tie Shall Be Declared. --  
16 Notwithstanding the provisions of subsection (a) of this section, if the  
17 circumstances described in subsection (b) of this section obtain except that the  
18 number of ineligible voters was sufficient to change the result to a tie but not  
19 result in a different winner, then the person protesting the election shall have  
20 the right to have a tie declared by the State Board unless the State Board  
21 determines by means other than the testimony of the ineligible voters as to how  
22 they voted that the subtraction of their votes would not result in a tie. If a tie  
23 is declared, the provisions of law governing tied elections shall apply.

24 (d) New Election in Entire Jurisdiction. -- Unless all parties in interest  
25 agree otherwise, a new election ordered under this section shall be held in the  
26 entire jurisdiction where the original election was held, rather than in a part  
27 thereof.

28 Sec. 3. This act is effective upon ratification and applies to all votes  
29 cast on or after that date.

## Summary of Legislative Proposal VI

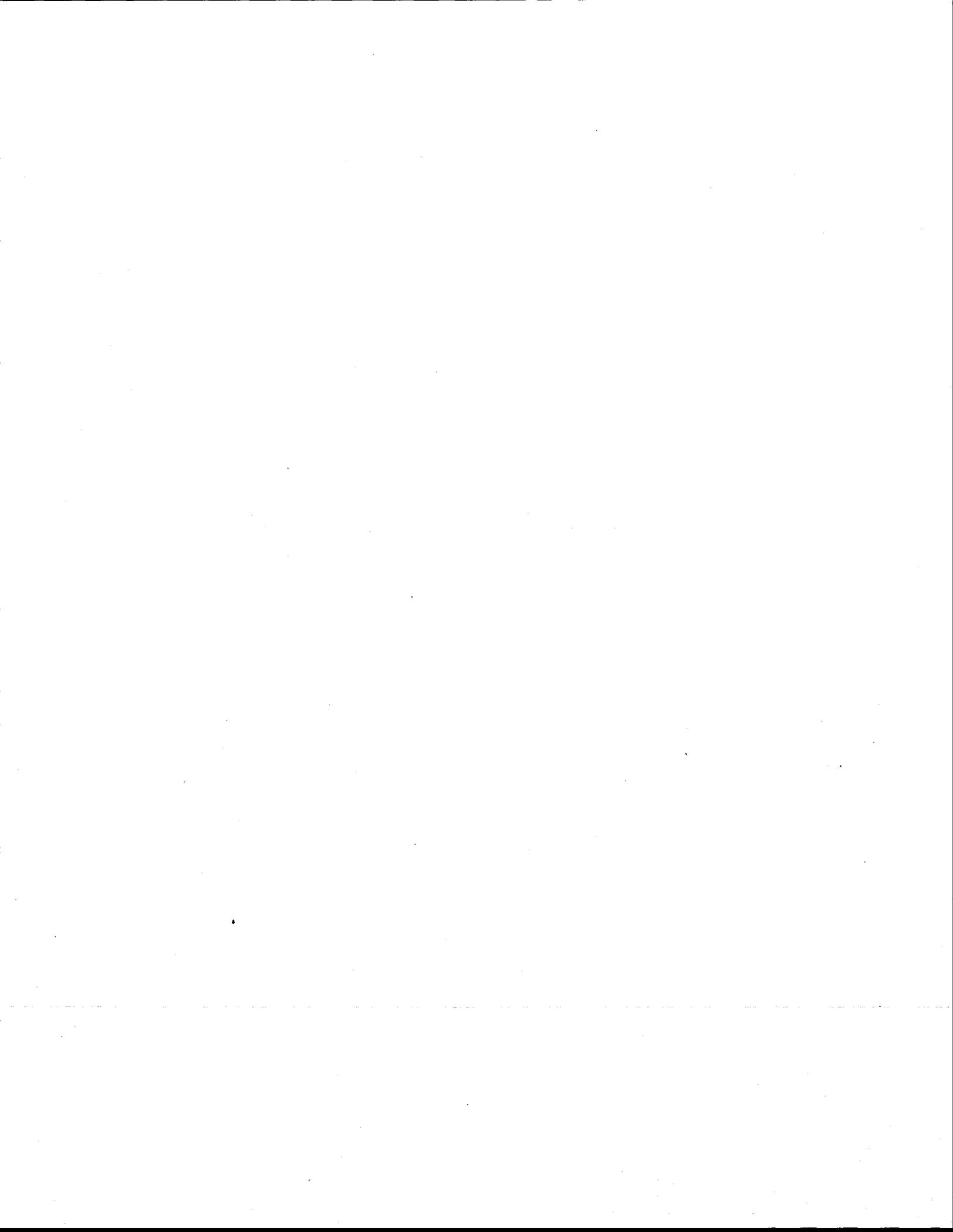
Legislative Proposal VI would prohibit the use in a hearing on a voting irregularity of a voter's testimony as to how that voter voted. Current case law in North Carolina seems to say that the burden is on a complainant contesting an election to show how the results would have been different if the irregularity had not occurred, and that one way in which they can do that is to elicit the voluntary testimony of ineligible voters as to how they voted.

The proposal would also effect a shifting of the burden in calling for a new election when the number of ineligible voters casting votes exceeds the margin of victory. Instead of requiring the complainant to prove that the votes would have changed the result, the proposal would give the complainant the right to a new election unless the State Board determines that the ineligible voters did not affect the outcome and does so by means other than the voters' testimony as to how they voted.

When the number of ineligible voters could result only in a tie, not a different winner, the protester could only demand declaration of a tie. In a general election, that would mean a new election, but in a second primary, that would mean that the party executive committee would choose a nominee.

The bill also provides that, when a new election is ordered, it will be held in the entire jurisdiction of the office, unless all parties in interest agree otherwise.

Effective upon ratification.



## GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

S

D

95-RRZ-058 ( )

Short Title: NVRA Corrections.

(Public)

Sponsors:

Referred to:

1                                   A BILL TO BE ENTITLED  
2 AN ACT TO MAKE CORRECTIONS IN THE 1994 LEGISLATION  
3 DESIGNED TO BRING NORTH CAROLINA INTO COMPLIANCE WITH  
4 THE NATIONAL VOTER REGISTRATION ACT.  
5 The General Assembly of North Carolina enacts:  
6           Section 1. G.S. 163-22(e) reads as rewritten:  
7       "(e) The State Board of Elections shall determine, in the manner provided  
8 by law, the form and content of ballots, instruction sheets, pollbooks, talley  
9 sheets, abstract and return forms, certificates of election, and other forms to be  
10 used in primaries and elections. The Board shall furnish to the county and  
11 ~~municipal~~ boards of elections the registration application forms required  
12 pursuant to G.S. ~~163-67, 163-82.3~~. The State Board of Elections shall direct  
13 the county boards of elections to purchase a sufficient quantity of all forms  
14 attendant to the registration and elections process. In addition, the State  
15 Board shall provide a source of supply from which the county boards of  
16 elections may purchase the quantity of pollbooks needed for the execution of  
17 its responsibilities. In the preparation of ballots, pollbooks, abstract and return  
18 forms, and all other forms, the State Board of Elections may call to its aid the  
19 Attorney General of the State, and it shall be the duty of the Attorney General  
20 to advise and aid in the preparation of these books, ballots and forms."  
21       Sec. 2. Article 4 of Chapter 163 of the General Statutes is  
22 amended by adding a new section to read:  
23 "§ 163-37. Duty of county board of commissioners.  
24 The respective boards of county commissioners shall appropriate reasonable  
25 and adequate funds necessary for the legal functions of the county board of

1 elections, including reasonable and just compensation of the supervisor of  
2 elections."

3       Sec. 3. Article 12 of Chapter 163 of the General Statutes is  
4 amended by adding a new section to read:

5 "**§ 163-131. Accessible polling places.**

6       (a) The State Board of Elections shall promulgate rules to assure that any  
7 disabled or elderly voter assigned to an inaccessible polling place, upon  
8 advance request of such voter, will be assigned to an accessible polling place.  
9 Such rules should allow the request to be made in advance of the day of the  
10 election.

11       (b) Words in this section have the meanings prescribed by P.L. 98-435,  
12 except that the term 'disabled' in this section has the same meaning as  
13 'handicapped' in P.L. 98-435."

14       Sec. 4. G.S. 163-213.2 reads as rewritten:

15 "**§ 163-213.2. Primary to be held; date; qualifications and registration of**  
16 **voters.**

17       On the Tuesday after the first Monday in May, 1992, and every four years  
18 thereafter, the voters of this State shall be given an opportunity to express their  
19 preference for the person to be the presidential candidate of their political  
20 party.

21       Any person otherwise qualified who will become qualified by age to vote in  
22 the general election held in the same year of the presidential preference  
23 primary shall be entitled to register and vote in the presidential preference  
24 primary. Such persons may register not earlier than 60 days nor later than the  
25 last day for making application to register under G.S. ~~163-67~~ 163-82.6 prior to  
26 the said primary. In addition, persons who will become qualified by age to  
27 register and vote in the general election for which the primary is held, who do  
28 not register during the special period may register to vote after such period as  
29 if they were qualified on the basis of age, but until they are qualified by age to  
30 vote, they may vote only in primary elections."

31       Sec. 5. G.S. 163-227.2 reads as rewritten:

32 "**§ 163-227.2. Alternate procedures for requesting application for absentee**  
33 **ballot; 'one-stop' voting procedure in board office.**

34       (a) A person expecting to be absent from the county in which he is  
35 registered during the entire period that the polls are open on the day of an  
36 election in which absentee ballots are authorized or is eligible under G.S.  
37 163-226(a)(2) or 163-226(a)(4) may request an application for absentee ballots,  
38 complete the application, receive the absentee ballots, vote and deliver them  
39 sealed in a container-return envelope to the county board of elections in the  
40 county in which he is registered under the provisions of this section.

41       (b) Not earlier than the ~~twenty-fourth day~~ first business day after the  
42 twenty-fifth day before an election, in which absentee ballots are authorized, in  
43 which he seeks to vote and not later than 5:00 P.M. on the Friday prior to that  
44 election, the voter shall appear in person only at the office of the county board

1 of elections and request that the chairman, a member, or the supervisor of  
2 elections of the board, or an employee of the board of elections, authorized by  
3 the board, furnish him with an application form as specified in G.S. 163-227.  
4 The voter shall complete the application in the presence of the chairman,  
5 member, supervisor of elections or authorized employee of the board, and shall  
6 deliver the application to that person.

7 (c) If the application is properly filled out, the chairman, member,  
8 supervisor of elections of the board, or employee of the board of elections,  
9 authorized by the board, shall enter the voter's name in the register of absentee  
10 ballot applications and ballots issued; shall furnish the voter with the  
11 instruction sheets called for by G.S. 163-229(c); shall furnish the voter with  
12 the ballots to which the application for absentee ballots applies; and shall  
13 furnish the voter with a container-return envelope. The voter thereupon shall  
14 comply with the provisions of G.S. 163-231(a) except that he shall deliver the  
15 container-return envelope to the chairman, member, supervisor of elections of  
16 the board, or an employee of the board of elections, authorized by the board,  
17 immediately after making and subscribing the certificate printed on the  
18 container-return envelope as provided in G.S. 163-229(b). All actions required  
19 by this subsection shall be performed in the office of the board of elections.  
20 For the purposes of this section only, the chairman, member, supervisor of  
21 elections of the board, or full-time employee, authorized by the board shall  
22 sign the application and certificate as the witness and indicate the official title  
23 held by him or her. Notwithstanding G.S. 163-231(a), in the case of this  
24 subsection, only one witness shall be required on the certificate.

25 (d) Only the chairman, member or supervisor of elections of the board shall  
26 keep the voter's application for absentee ballots and the sealed container-return  
27 envelope in a safe place, separate and apart from other applications and  
28 container-return envelopes. At the first meeting of the board pursuant to G.S.  
29 163-230(2) held after receipt of the application and envelope, the chairman  
30 shall comply with the requirements of G.S. 163-230(1) and 163-230(2) b. and  
31 c. If the voter's application for absentee ballots is approved by the board at  
32 that meeting, the application form and container-return envelope, with the  
33 ballots enclosed, shall be handled in the same manner and under the same  
34 provisions of law as applications and container-return envelopes received by the  
35 board under other provisions of this Article. If the voter's application for  
36 absentee ballots is disapproved by the board, the board shall so notify the voter  
37 stating the reason for disapproval by first-class mail addressed to the voter at  
38 his residence address or at the address shown in the application for absentee  
39 ballots; and the board chairman shall retain the container-return envelope in its  
40 unopened condition until the day of the primary or election to which it relates  
41 and on that day he shall destroy the container-return envelope and the ballots  
42 therein, without, however, revealing the manner in which the voter marked the  
43 ballots.

1 (e) The voter shall vote his absentee ballot in a voting booth and the county  
2 board of elections shall provide a voting booth for that purpose, provided  
3 however, that the county board of elections may in the alternative provide a  
4 private room for the voter adjacent to the office of the board, in which case the  
5 voter shall vote his absentee ballot in that room. The voting booth shall be in  
6 the office of the county board of elections. If the voter needs assistance in  
7 getting to and from the voting booth and in preparing and marking his ballots  
8 or if he is a blind voter, only a member of the county board of elections, the  
9 supervisor of elections, an employee of the board of elections authorized by  
10 the board, a near relative of the voter as defined in G.S. 163-227(c)(4), or the  
11 voter's legal guardian shall be entitled to assist the voter.

12 (f) Notwithstanding the exception specified in G.S. ~~163-116~~ 163-36  
13 counties which operate a modified full-time office shall remain open five days  
14 each week during regular business hours consistent with daily hours presently  
15 observed by the county board of elections, commencing with the date  
16 prescribed in G.S. 163-227.2(b) and continuing until 5:00 P.M. on the Friday  
17 prior to that election or primary. The boards of county commissioners shall  
18 provide necessary funds for the additional operation of the office during such  
19 time."

20 Sec. 6. G.S. 163-253 reads as rewritten:

21 "§ 163-253. Article inapplicable to persons after change of status;  
22 reregistration required.

23 Upon discharge from the armed forces of the United States or termination of  
24 any other status qualifying him to register and vote by absentee ballot under  
25 the provisions of this Article, the voter shall not be entitled to vote by military  
26 absentee ballot, and if he was registered under the provisions of this Article his  
27 registration shall become void and he shall be required to register under the  
28 provisions of Article ~~7-~~ 7A before being entitled to vote in any primary or  
29 election."

30 Sec. 7. G.S. 163-254 reads as rewritten:

31 "§ 163-254. Registration and voting on primary or election day.

32 Notwithstanding any other provisions of Chapter 163 of the General  
33 Statutes, any person entitled to vote an absentee ballot pursuant to G.S.  
34 163-245 shall be permitted to register in person at any time including the day  
35 of a primary or election. Should such person's eligibility to register or vote as  
36 provided in G.S. 163-245 terminate after the ~~registration records have closed~~  
37 twenty-fifth day prior to a primary or election, such person, if he appears in  
38 person, shall be entitled to register if otherwise qualified ~~during the time the~~  
39 ~~records are closed,~~ after the twenty-fifth day before the primary or election, or  
40 on the primary or election day, and shall be permitted to vote if such person is  
41 otherwise qualified."

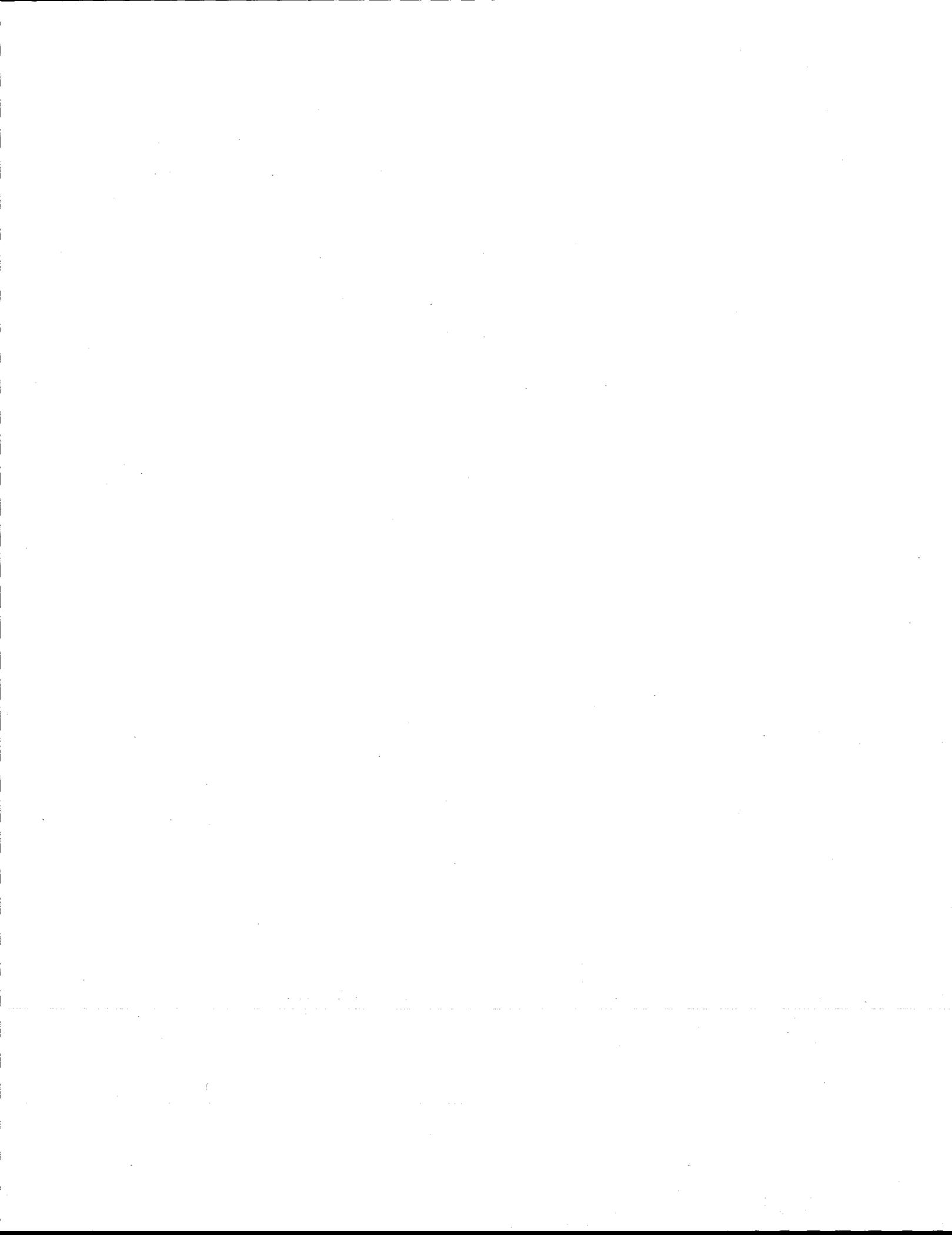
42 Sec. 8. This act is effective upon ratification.

## Summary of Legislative Proposal VII

Legislative Proposal VII would correct some inadvertent omissions in the 1994 legislation that rewrote North Carolina's voter registration laws to comply with the National Voter Registration Act (NVRA). Chief among the corrections is the re-enactment of a sentence, inadvertently repealed in 1994 but not re-enacted, requiring the county commissioners of each county to fund the legal duties of the county board of elections. Another correction would make it clear that the period for One-Stop absentee voting begins on the first business day after the 24th day before the election, rather than the 24th day itself, with usually falls on a Saturday.

Two bills were introduced in 1995 to effect these changes. One of them, Senate Bill 58, passed both houses with the contents of Legislative Proposal VII but was stalled in a conference committee that could not agree on additional provisions that were added by one house. Without commenting on the other provisions, the Study Committee endorses enactment of the basic cleanup provisions.

Effective upon ratification.



## GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

S

D

95-RRZ-057 ( )

Short Title: Gifts From Federal PAC.

(Public)

Sponsors:

Referred to:

1                                   A BILL TO BE ENTITLED  
 2 AN ACT TO CODIFY THE STATE BOARD OF ELECTIONS RULING  
 3 CONCERNING CONTRIBUTIONS TO STATE CAMPAIGNS BY  
 4 FEDERAL COMMITTEES.

5 The General Assembly of North Carolina enacts:

6           Section 1. Article 22A of Chapter 163 of the General Statutes is  
 7 amended by adding a new section to read:

8       "163-278.7A. Gifts from federal political committees.

9       It shall be permissible for a federal candidate's committee or a Federal  
 10 Political Action Committee, as defined by the Federal Election Campaign Act  
 11 and regulations adopted pursuant thereto, to make contributions to a North  
 12 Carolina political committee registered under this Article with the State Board  
 13 of Elections or a county board of elections, provided that the contributing  
 14 committee:

- 15           (1) Is registered with the State Board of Elections consistent with  
 16           the provisions of this Article;  
 17           (2) Complies with reporting requirements specified by the State  
 18           Board of Elections; and  
 19           (3) Appoints an assistant or deputy treasurer who is a resident of  
 20           North Carolina and stipulates to the State Board of Elections  
 21           that the designated in-State resident assistant or deputy  
 22           treasurer shall be authorized to produce whatever records  
 23           reflecting political activity in North Carolina the State Board  
 24           of Elections deems necessary."

25       Sec. 2. This act is effective upon ratification.

## Summary of Legislative Proposal VIII

Legislative Proposal VIII would put into statute a State Board of Elections ruling concerning contributions by federal candidate committees and political action committees (PACs). The ruling is that those federal committees may give to a North Carolina campaign if the federal committee:

1. Has registered with the State Board of Elections;
2. Complies with reporting requirements specified by the State Board; and
3. Has appointed a North Carolina resident as deputy or assistant treasurer and given that official authority to produce whatever records of political activity in North Carolina the State Board deems necessary.

Effective upon ratification.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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95-RRZ-059.1 ( )

Short Title: Modified At-Large Election Methods.

(Public)

Sponsors:

Referred to:

1                                   A BILL TO BE ENTITLED  
2 AN ACT TO ADD TO THE MODES OF ELECTION THAT MAY BE  
3 CHOSEN LOCALLY FOR CITY AND COUNTY GOVERNMENTS THE  
4 FOLLOWING: CUMULATIVE VOTING AND PREFERENCE VOTING.  
5 The General Assembly of North Carolina enacts:  
6           Section 1. G.S. 160A-101 reads as rewritten:  
7 "§ 160A-101. **Optional forms.**  
8 Any city may change its name or alter its form of government by adopting  
9 any one or combination of the options prescribed by this section:  
10           (1) Name of the corporation:  
11                 The name of the corporation may be changed to any name  
12                 not deceptively similar to that of another city in this State.  
13           (2) Style of the corporation:  
14                 The city may be styled a city, town, or village.  
15           (3) Style of the governing board:  
16                 The governing board may be styled the board of  
17                 commissioners, the board of aldermen, or the council.  
18           (4) Terms of office of members of the council:  
19                 Members of the council shall serve terms of office of either  
20                 two or four years. All of the terms need not be of the same  
21                 length, and all of the terms need not expire in the same year.  
22           (5) Number of members of the council:  
23                 The council shall consist of any number of members not less  
24                 than three nor more than 12.

1           (6) Mode of election of the council:

2           a. All candidates shall be nominated and elected at large  
3           by all the qualified voters of the ~~city~~ city, using one of  
4           the following methods:

5           1. One Vote Per Office. As used in this Article, 'one  
6           vote per office' means a system in which a voter  
7           may cast as many votes as the number to be  
8           elected but may cast fewer votes than the number  
9           to be elected, and a voter may cast only one vote  
10           for any one candidate. G.S. 163-291, 163-292,  
11           163-293, and 163-294 apply the one vote per  
12           office method to the four election systems set out  
13           in subdivision (7) of this section.

14           2. Cumulative Voting. As used in this Article,  
15           'cumulative voting' means a system in which a  
16           voter may cast a number of votes up to the  
17           number of members to be elected, and the voter  
18           may distribute those votes in any combination,  
19           including all votes for one candidate.

20           3. Preference Voting. As used in this Article,  
21           'preference voting' means a system in which a  
22           voter ranks the candidates in the order the voter  
23           prefers them, and candidates win by reaching a  
24           required threshold of top-ranked votes; votes in  
25           excess of the threshold are transferred to the  
26           voter's next-choice candidates; candidates with  
27           the fewest top-ranked votes are eliminated, and  
28           all their votes are transferred to the next-choice  
29           candidates. Voters may rank candidates equally.  
30           The threshold is calculated as votes divided by  
31           number of seats; or votes divided by number of  
32           seats plus one, plus one vote; or any number in  
33           between.

34           b. The city shall be divided into single-member electoral  
35           districts; council members shall be apportioned to the  
36           districts so that each member represents the same  
37           number of persons as nearly as possible, except for  
38           members apportioned to the city at large, if any; the  
39           qualified voters of each district shall nominate and elect  
40           candidates who reside in the district for seats  
41           apportioned to that district; and all the qualified voters  
42           of the city shall nominate and elect candidates  
43           apportioned to the city at large, if any. In any multiseat  
44           contest under this sub-subdivision, the city may adopt

- 1                   any of the voting methods listed in sub-subdivision a. of  
2                   this subdivision.
- 3           c.       The city shall be divided into single-member electoral  
4                   districts; council members shall be apportioned to the  
5                   districts so that each member represents the same  
6                   number of persons as nearly as possible, except for  
7                   members apportioned to the city at large; and  
8                   candidates shall reside in and represent the districts  
9                   according to the apportionment plan adopted, but all  
10                   candidates shall be nominated and elected by all the  
11                   qualified voters of the city. In any multi-seat contest  
12                   under this sub-subdivision, the city may adopt any of  
13                   the voting methods listed in sub-subdivision a. of this  
14                   subdivision.
- 15           d.       The city shall be divided into electoral districts equal in  
16                   number to one half the number of council seats; the  
17                   council seats shall be divided equally into 'ward seats'  
18                   and 'at-large seats,' one each of which shall be  
19                   apportioned to each district, so that each council  
20                   member represents the same number of persons as  
21                   nearly as possible; the qualified voters of each district  
22                   shall nominate and elect candidates to the 'ward seats';  
23                   candidates for the 'at-large seats' shall reside in and  
24                   represent the districts according to the apportionment  
25                   plan adopted, but all candidates for 'at-large' seats shall  
26                   be nominated and elected by all the qualified voters of  
27                   the city. In any multiseat contest under this sub-  
28                   subdivision, the city may adopt any of the voting  
29                   methods listed in sub-subdivision a. of this subdivision.
- 30           e.       The city shall be divided into single-member electoral  
31                   districts; council members shall be apportioned to the  
32                   districts so that each member represents the same  
33                   number of persons as nearly as possible, except for  
34                   members apportioned to the city at large, if any; in a  
35                   nonpartisan primary, the qualified voters of each district  
36                   shall nominate two candidates who reside in the district,  
37                   and the qualified voters of the entire city shall nominate  
38                   two candidates for each seat apportioned to the city at  
39                   large, if any; and all candidates shall be elected by all  
40                   the qualified voters of the city. In any multiseat contest  
41                   under this sub-subdivision, the city may adopt any of  
42                   the voting methods listed in sub-subdivision a. of this  
43                   subdivision.

1                    Notwithstanding the provisions of G.S. 163-111, 163-291,  
 2                    163-292, or 163-294, the city may choose options 1. through  
 3                    3. of sub-subdivision a. of this subdivision for use for a  
 4                    multiseat contest in a primary, or in a general election, or in  
 5                    both, except that if the nonpartisan election and runoff  
 6                    method is used as provided by sub-subdivision (7)c. of this  
 7                    section, the city may not choose option 2. or 3. of sub-  
 8                    subdivision a. of this subdivision.

9                    If either of options b, c, d or e is adopted, the council shall  
 10                   divide the city into the requisite number of single-member  
 11                   electoral districts according to the apportionment plan  
 12                   adopted, and shall cause a map of the districts so laid out to  
 13                   be drawn up and filed as provided by G.S. 160A-22 and  
 14                   160A-23. No more than one half of the council may be  
 15                   apportioned to the city at large. An initiative petition may  
 16                   specify the number of single-member electoral districts to be  
 17                   laid out, but the drawing of district boundaries and  
 18                   apportionment of members to the districts shall be done in all  
 19                   cases by the council.

20                   (7) Elections:

- 21                   a. Partisan. -- Municipal primaries and elections shall be  
 22                   conducted on a partisan basis as provided in G.S.  
 23                   163-291.  
 24                   b. Nonpartisan Plurality. -- Municipal elections shall be  
 25                   conducted as provided in G.S. 163-292.  
 26                   c. Nonpartisan Election and Runoff Election. -- Municipal  
 27                   elections and runoff elections shall be conducted as  
 28                   provided in G.S. 163-293.  
 29                   d. Nonpartisan Primary and Election. -- Municipal  
 30                   primaries and elections shall be conducted as provided  
 31                   in G.S. 163-294.

32                   (8) Selection of mayor:

- 33                   a. The mayor shall be elected by all the qualified voters of  
 34                   the city for a term of not less than two years nor more  
 35                   than four years.  
 36                   b. The mayor shall be selected by the council from among  
 37                   its membership to serve at its pleasure.

38                   Under option a, the mayor may be given the right to vote  
 39                   on all matters before the council, or he may be limited to  
 40                   voting only to break a tie. Under option b, the mayor has the  
 41                   right to vote on all matters before the council. In both cases  
 42                   the mayor has no right to break a tie vote in which he  
 43                   participated.

44                   (9) Form of government:

- 1 a. The city shall operate under the mayor-council form of  
 2 government in accordance with Part 3 of Article 7 of  
 3 this Chapter.  
 4 b. The city shall operate under the council-manager form  
 5 of government in accordance with Part 2 of Article 7 of  
 6 this Chapter and any charter provisions not in conflict  
 7 therewith."

8 Sec. 2. G.S. 153A-58 reads as rewritten:

9 "§ 153A-58. Optional structures.

10 A county may alter the structure of its board of commissioners by adopting  
 11 one or any combination of the options prescribed by this section.

- 12 (1) Number of members of the board of commissioners: The  
 13 board may consist of any number of members not less than  
 14 three, except as limited by subdivision (2)d of this section.  
 15 (2) Terms of office of members of the board of commissioners:  
 16 a. Members shall be elected for two-year terms of office.  
 17 b. Members shall be elected for four-year terms of office.  
 18 c. Members shall be elected for overlapping four-year  
 19 terms of office.  
 20 d. The board shall consist of an odd number of members,  
 21 who are elected for a combination of four- and two-year  
 22 terms of office, so that a majority of members is elected  
 23 each two years. This option may be used only if all  
 24 members of the board are nominated and elected by the  
 25 voters of the entire county, and only if the chairman of  
 26 the board is elected by and from the members of the  
 27 board.  
 28 (3) Mode of election of the board of commissioners:  
 29 a. The qualified voters of the entire county shall nominate  
 30 all candidates for and elect all members of the ~~board~~  
 31 board at large, using one of the following methods:  
 32 1. One Vote Per Office. As used in this Article, 'one  
 33 vote per office' means a system in which a voter  
 34 may cast as many votes as the number to be  
 35 electd but may cast fewer votes than the number  
 36 to be elected, and a voter may cast only one vote  
 37 for any one candidate.  
 38 2. Cumulative Voting. As used in this Article,  
 39 'cumulative voting' means a system in which a  
 40 voter may cast a number of votes up to the  
 41 number of members to be elected, and the voter  
 42 may distribute those votes in any combination,  
 43 including all votes for one candidate.

1                   3.   Preference Voting. As used in this Article,  
2                   'preference voting' means a system in which a  
3                   voter ranks the candidates in the order the voter  
4                   prefers them, and candidates win by reaching a  
5                   required threshold of top-ranked votes; votes in  
6                   excess of the threshold are transferred to the  
7                   voter's next-choice candidates; candidates with  
8                   the fewest top-ranked votes are eliminated, and  
9                   all their votes are transferred to the next-choice  
10                   candidates. Voters may rank candidates equally.  
11                   The threshold is calculated as votes divided by  
12                   number of seats; or votes divided by number of  
13                   seats plus one, plus one vote; or any number in  
14                   between.

15                   Notwithstanding the provisions of G.S. 163-111 and of  
16                   Articles 13 and 15 of Chapter 163 of the General Statutes,  
17                   the county may choose options 1. through 3. of sub-  
18                   subdivision a. of this section for use in a primary, or in a  
19                   general election, or in both.

20                   For options b, c, and d, the county shall be divided into  
21                   electoral districts, and board members shall be apportioned to  
22                   the districts so that the quotients obtained by dividing the  
23                   population of each district by the number of commissioners  
24                   apportioned to the district are as nearly equal as practicable.

25                   b.   The qualified voters of each district shall nominate  
26                   candidates and elect members who reside in the district  
27                   for seats apportioned to that district; and the qualified  
28                   voters of the entire county shall nominate candidates  
29                   and elect members apportioned to the county at large,  
30                   if any. In any multiseat contest under this sub-  
31                   subdivision, the county may adopt any of the voting  
32                   methods listed in sub-subdivision a. of this subdivision.

33                   c.   The qualified voters of each district shall nominate  
34                   candidates who reside in the district for seats  
35                   apportioned to that district, and the qualified voters of  
36                   the entire county shall nominate candidates for seats  
37                   apportioned to the county at large, if any; and the  
38                   qualified voters of the entire county shall elect all the  
39                   members of the board. In any multiseat contest under  
40                   this sub-subdivision, the county may adopt any of the  
41                   voting methods listed in sub-subdivision a. of this  
42                   subdivision.

43                   d.   Members shall reside in and represent the districts  
44                   according to the apportionment plan adopted, but the

1 qualified voters of the entire county shall nominate all  
2 candidates for and elect all members of the board. In  
3 any multiseat contest under this sub-subdivision, the  
4 county may adopt any of the voting methods listed in  
5 sub-subdivision a. of this subdivision.

6 If any of options b, c, or d is adopted, the board shall  
7 divide the county into the requisite number of electoral  
8 districts according to the apportionment plan adopted, and  
9 shall cause a delineation of the districts so laid out to be  
10 drawn up and filed as required by G.S. 153A-20. No more  
11 than half the board may be apportioned to the county at  
12 large.

13 (4) Selection of chairman of the board of commissioners:

14 a. The board shall elect a chairman from among its  
15 membership to serve a one-year term, as provided by  
16 G.S. 153A-39.

17 b. The chairmanship shall be a separate office. The  
18 qualified voters of the entire county nominate  
19 candidates for and elect the chairman for a two- or  
20 four-year term."

21 Sec. 3. This act is effective upon ratification.

## Summary of Legislative Proposal IX

Legislative Proposal IX would add two choices to the menu of local options for modes of election of Boards of County Commissioners and City Councils the election methods of cumulative voting and preference voting. Both methods apply to multi-seat contests, rather than single-seat contests.

Under cumulative voting in a two-seat race, the voter would have two votes and could give both votes to one candidate, or could take the more conventional approach and give one vote each to two candidates. Under preference voting in a two-seat race, the voter would rank candidates according to preference. (For a fuller explanation of the methods, see Appendix H.)

The proposal is permissive legislation. The current local-option law, which this proposal would amend, allows the local governing board (Board of County Commissioners or City Council) to change its own mode of election, selecting from a menu of choices listed in the law. The menu currently includes at-large representation, district representation, partisan primary and election, nonpartisan plurality election, etc. The county local option law requires such a change to be initiated by the commissioners and approved by the county's voters in referendum. The city local option law allows the City Council to make the change, subject to a referendum only if 10% of the voters petition for a vote. The city law, unlike the county law, also allows the voters to initiate the change by petition, bypassing the City Council.

Effective upon ratification.

